



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

April 11, 2017

Timothy Ritter
Superintendent
Temecula Valley Unified School District
31350 Rancho Vista Road
Temecula, CA 92592

(In reply, please refer to case no. 09-14-1287.)

Dear Superintendent Ritter:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Temecula Valley Unified School District (District). The complaint alleged that the District discriminates against English learner (EL or English learner) students on the basis of their national origin language minority status. Specifically, the complaint alleged:

1. The District does not provide students who are English learners at the middle school level with an effective program of English language instruction; and
2. The District does not provide English learners at the middle school level with equal access to the Recipient's core instructional program until they are fully English proficient.

In addition, based on evidence gathered during OCR's investigation, OCR added a third issue to its investigation:

3. Whether the District adequately notifies national origin minority group parents of information that is called to the attention of other parents, because notice is not provided in a language other than English.¹

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

¹ The District was notified of this additional issue by email dated February 3, 2017.

Background

The District is located in Riverside County in southern California and serves students from kindergarten through twelfth grade. During the 2013-14 school year, when the complaint was filed, the District enrolled approximately 30,000 students, of whom 2,745 were English learner (EL) students. About 70% of the EL students spoke Spanish; the remainder spoke a variety of languages including Filipino, Vietnamese, and Arabic. The total District population, and the overall proportion of EL students has not changed significantly since that time. In 2013-14, the District enrolled 6445 students in its six middle schools, of whom 270, or 4.2% were EL. By 2015-16, the middle school enrollment had increased to 6551 and the EL enrollment to 369, or 5.6%.²

The complaint alleged that, during the 2013-14 school year, the District had reduced the instructional services available to EL students at its middle schools, and, as a result, EL students were not receiving equal access to the educational program. Of particular concern to the complainant was Bella Vista Middle School (Bella Vista) where the District had allegedly eliminated all EL services during the spring semester of 2014.

OCR reviewed data concerning the EL students enrolled in Bella Vista during the 2013-14 school year and interviewed District and middle school staff concerning the EL program at Bella Vista and other District middle schools during the 2013-14, 2014-15, and 2015-16 school years. OCR also reviewed a District Master Plan for English Learners (Master Plan) adopted in 2010. The Master Plan has been updated several times since 2010, most recently in May 2016. The District has informed OCR that it is in the process of a comprehensive revision to the Master Plan to be completed during the 2017-18 school year.

Prior to the completion of OCR's investigation and before a compliance determination was reached, the District expressed an interest in resolving the complaint. On April 7, 2017, the District submitted a Resolution Agreement (Agreement) which, when implemented, is intended to resolve both the area of non-compliance and OCR's additional concerns.

OCR determined that it was appropriate to resolve this complaint with the enclosed Resolution Agreement (Agreement). The Agreement requires the District to, among other things: identify an EL expert to work with an EL coordinating committee to revise its Master Plan for EL Students; fully implement the revised Master Plan; develop and implement an interim plan while the Master Plan is being revised; and develop a plan for compensatory education for affected EL students at Bella Vista.

Issue 1: Whether the District provides EL students at the middle school level with an effective program of English language development (ELD).

² Data provided by the California Department of Education, available at <http://data1.cde.ca.gov/dataquest/>

Issue 2: Whether the District provides EL students at the middle school level with equal access to the Recipient's core instructional program until they are fully English proficient.

Legal Standard

The Title VI regulation, at 34 C.F.R. §100.3(a), states that no person shall, on the grounds of national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving federal financial assistance. The regulation, at 34 C.F.R. §100.3(b)(1)(i)-(vi), further states, in relevant part, that a recipient may not, on the grounds of national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are different or provided in a different manner; treat an individual differently in determining continued enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program. The regulation, at 34 C.F.R. §100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of national origin, or have the effect of substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular national origin.

On May 25, 1970, pursuant to its authority under Title VI, the U.S. Department of Health, Education, and Welfare issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," reprinted in 35 Fed. Reg. 11,595 (July 18, 1970) (hereinafter May 25th memorandum). The memorandum clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students. The memorandum states, in part, that school districts must take affirmative steps to address the language needs of English learners.

Title VI and the May 25th memorandum require school districts to select a sound educational theory for their programs for English learners, and to use practices, resources and personnel reasonably calculated to effectively implement their educational theory. Districts are expected to ensure their educational program produces results indicating that the students' language barriers are actually being overcome in a reasonable period of time, and to modify programs that are not successful.

I. Identification and Reclassification of EL students

Legal Standard

The May 25th memorandum requires school districts to take affirmative steps to address the needs of EL students. To do so, school districts must have procedures in place to accurately and timely identify potential EL students. Once identified, EL students must receive services until they are able to participate equally with the students who entered school with an English

language background.³ For this reason, EL students may not be exited from EL programs, services, or status until they demonstrate English proficiency in speaking, listening, reading, and writing. School districts must monitor the academic progress of former EL students to ensure that students have not been prematurely exited (reclassified); any academic deficits they incurred resulting from the EL program have been remedied; and they are meaningfully participating in the district's educational programs comparable to their peers who were never EL students.

Facts

The District's Master Plan includes a detailed description of District procedures for identifying EL students, including completion of a Home Language Survey (HLS), the administration of the California English Language Development Test (CELDT) for students whose HLS indicates that they may use a language other than English, criteria for identifying students as EL, and procedures for informing their parents of the results of the identification process. The Plan also includes criteria for reclassifying students as fluent English proficient (RFEP), which were most recently updated in 2016.

The District informed OCR that it administers the CELDT to all students whose home language survey indicates that they use a language other than English at home. Since the 2014-15 school year, the initial enrollment process has been centralized to ensure that students are promptly assessed, and tests are scored immediately. Staff at two middle schools informed OCR that, during the 2014-15 school year, several new EL students were not immediately tested, and did not receive EL services until several months into the school year.

With respect to reclassification, the District informed OCR that it provides sites with lists of students who meet District criteria for reclassification, and that the sites follow District procedures to complete the reclassification process. District reclassification criteria have changed several times since 2013-14 in response to the discontinuation of the California Standards Test.

Middle school staff raised concerns to OCR regarding students, especially those in special education classes, who were reclassified during the 2013-14 or 2014-15 school years without meeting District criteria or having the necessary English proficiency to participate equally in the educational program. Although the Master Plan requires the participation of classroom teachers in the reclassification process, staff stated that decisions were frequently made without the input of teachers who were knowledgeable about students' actual academic English skills. Staff also reported the need for a process to monitor the progress of students who had been reclassified and provide assistance to those who were struggling.

³ See *Castañeda v. Pickard*, 648 F.2d 989, 1011 (5th Cir. 1981).

Analysis

The evidence established that the District has developed criteria and procedures for identifying students who require EL services, and for exiting them from the program when they no longer need such services. Concerns raised by middle school staff raise the possibility of deficiencies in the implementation of these procedures that may have resulted in delays in the identification of EL students or premature exiting of students from the EL program. Before OCR completed its investigation to assess whether the District delayed identification, or prematurely reclassified, EL students, the District expressed its interest in entering into a voluntary resolution pursuant to section 302 of OCR's CPM, and OCR agreed it was appropriate to do so.

II. Language Assistance and Meaningful Access to Grade Level Curriculum for EL students

Legal Standard

Districts have a dual responsibility to teach students English and to provide them with access to the curriculum, taking steps to ensure that students are not left with academic deficits. This dual obligation requires school districts to design and implement EL programs that are reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable period of time.

Facts

The Master Plan includes a two page description of the instructional program for EL students which was not substantially revised between 2010 and 2016. This description outlines the general requirements for effective ELD and appropriate academic instruction for EL students, but does not provide guidance regarding the specific EL services to be provided in District schools.

2013-14 School Year

District and middle school staff informed OCR that, prior to the 2013-14 school year, each middle school site implemented its own English learner program, coordinated by a site English language development (ELD) teacher. Most schools offered multiple ELD classes, based on student proficiency levels; some also offered content area classes specifically designed for EL students. The ELD teachers met periodically to collaborate and improve instruction, but, according to District administrators, the program was seen as inconsistent across the District in design and implementation.

By the fall semester of 2013, middle school ELD course offerings had been reduced, with most schools offering only one or two ELD classes for students at multiple levels of proficiency. Staff at several schools reported that students at the more advanced levels of English proficiency were placed in regular English language arts (ELA) classes without specialized EL support. Staff

reported that, at some schools, advanced students were placed in literacy support classes with non-EL students who were struggling in reading. At other schools, they were reportedly not allowed to enroll in these classes.

At Bella Vista, at any time during the fall 2013 semester between four and seven EL students at the beginning and early intermediate levels of English proficiency were enrolled in a two period ELD/ELA class during the fall 2013 semester. The 26 students for whom OCR received student records who were at or above intermediate proficiency were placed in mainstream classrooms for their entire day.⁴ The District stated that it ensured that these students understood content area instruction by grouping or clustering them together for specially designed academic instruction in English (SDAIE) instruction.

During the spring 2014 semester, the Bella Vista ELD/ELA class was discontinued, and students who had been in the class were placed in grade level mainstream ELA classes. The District coordinator informed OCR that these students received targeted support in their ELA classes, but acknowledged that the teachers did not address the ELD standards. OCR's review of the grades of three of these students revealed significant drops in achievement.

OCR reviewed the 2013-14 class schedules of EL students at Bella Vista at and above the intermediate level of proficiency. While many of these students were grouped together for ELA instruction in sixth grade, such clustering was less common in seventh and eighth grades, making it less likely that teachers could target the needs of EL students in mainstream classes. Except for sixth grade social studies and seventh grade math/science, there was little clustering of EL students at any proficiency level in other content area classes. Teachers at other middle schools reported similar grouping patterns.

The District informed OCR that EL students at the lowest levels of English proficiency at Bella Vista were expected to work with an instructional assistant who would assist them in understanding content instruction. According to some witnesses, however, the instructional assistant who would have provided this assistance left the school at the end of the fall 2013 semester and was not replaced until April 2014. In the interim, except for the help provided to Spanish speakers by campus security personnel, EL students whose English proficiency was the most limited were reportedly unable to understand much of their instruction.

2014-15 School Year

Beginning in the 2014-15 school year, the District eliminated the ELD teacher position and replaced it with a new position, the ELA Specialist, at each middle school. Only one of the former ELD teachers was hired as an ELA specialist; the other ELA Specialists reportedly had not previously taught ELD classes. The ELA Specialists were expected to deliver ELD instruction to EL students and support them in their other classes.

⁴ Student schedules provided to OCR indicate that approximately eight of these students were in special education classes for part or all of their school day.

In addition to creating the ELA Specialist position, the District adopted a new District-wide middle school program called the Common Core Discovery Replacement (Replacement Program). The District informed OCR that the program was implemented in order to better address the ELD standards and provide uniformity across the District. According to the District, the changes were also an effort to provide students with more updated curriculum and access to the Common Core ELA standards.

At most of the District middle schools, the Replacement Program included a double-blocked Discovery class for EL students at CELDT levels one through three as well as English only (EO) students who were struggling with reading; a single period Discovery workshop designed primarily for EO students; and a thirty minute ELD class for ELs at CELDT levels four and five.

According to District administrators, EL students were selected for the Discovery class based on the CELDT scores and prior achievement, while EO students were placed in the class if they had previously failed ELA classes or received low scores on standardized tests. Based on school staff interviews, OCR found that the enrollment of the classes varied among middle schools, but that Discovery classes at most middle schools included students who were new to the country, EL students who had been in the District more than five years (long term English learners, or LTELs), and native English speakers who had fallen behind in reading. The primary curriculum was designed to address students' reading deficits, but ELA specialists reported grouping students for instruction, including some separate ELD instruction.

School site staff expressed concern about the wide range of students assigned to the classes and reported that it was difficult to address their varying needs. Staff stated that students at the lowest levels of proficiency appeared "lost" or could not access the instruction, and that the curriculum focused on teaching them reading without adequately addressing their needs in speaking and understanding oral English.

According to District administrators, students at the higher levels of English proficiency at most middle schools received daily ELD instruction from the ELA specialist during a schoolwide intervention period. Site staff informed OCR that this period was designed to enable content area teachers to provide special help to students in their classes who were falling behind. Students who received ELD during this period did not have access to this additional help.

Several staff members expressed particular concern that students with disabilities were not receiving ELD services. Staff reported having been told that students who received special education services could not enroll in ELA Discovery classes, and that special education status "trumps" EL status, raising a concern that EL students with disabilities were not permitted to receive EL services if they were receiving special education services. Witnesses from schools told OCR that, prior to spring 2015, language goals were not included in the IEPs of EL students with disabilities, even when they were not receiving ELD instruction in the general education program. This raised a concern that, even if the students were expected to receive ELD

instruction in their special education classrooms, no decision had been made as to how they would receive instruction that focused on developing their English proficiency.

As part of their responsibilities, ELA Specialists were expected to provide the EL students in their Discovery classes with assistance in their content classes. Content teachers reported that this assistance was inconsistent, that students continued to experience difficulties in understanding instruction, and in taking course exams that would enable them to demonstrate their content knowledge.

Teachers also noted that, although EL students (especially those at the lower levels of English proficiency) were expected to be clustered for instruction, this did not happen at all middle schools. The District pointed to clustering EL students as one way in which it seeks to assist EL students in the classroom because it enables an instructor to plan for and provide instruction to the group of students and it also provides students with a group of EL peers for additional support. Several teachers also told OCR that content teachers were often unaware of the needs of their EL students, and relied on bilingual classmates, rather than differentiated instruction, to provide EL students access to content instruction.

2015-16 School Year

Beginning in the 2015-16 school year, the District took additional steps to ensure that the Replacement Program met the needs of all EL students. These steps included enrolling only EL students in Discovery classes, aligning instruction more closely to the ELA and ELD standards, differentiating instruction by English proficiency level and instructional needs, and scheduling weekly meetings between the ELA specialists and the Director of Curriculum and Instruction to ensure that all lessons are standards-based and differentiated by proficiency level.

The District reported that, beginning in the 2015-16 school year, the upper-level ELD class was scheduled during the regular school day, and EL students were therefore able to participate in the school-wide intervention periods at each school. EL students in these classes were offered elective classes after school. In addition, according to the District's Director of Curriculum and Instruction, during the 2015-16 school year, EL students were clustered in classes for content instruction.

Analysis

Pursuant to Title VI and the May 25th memorandum districts are required to select a sound educational theory for their programs for English learners, and to use practices, resources and personnel reasonably calculated to effectively implement their educational theory. The information gathered by OCR in regards to the 2013-2014 raised concerns about whether the District had selected an educational theory and that it was fully implementing that theory, in a manner consistent with this requirement. Certain features of the District's Master Plan and the EL program at its middle schools contributed to concerns in this area. For example, the District's 2010 Master Plan did not identify or describe the programs for EL students available in

the District, the means by which students at various grade levels would receive ELD, the standards and criteria to be used to measure their progress in learning English and accessing the core curriculum, or the standards by which the effectiveness of the program would be measured. The lack of inclusion of these important components of the District's EL program suggested a deficiency with respect to whether the District had a sound educational theory in place for implementing its EL program. In addition, the evidence gathered to date indicated a lack of consistency in the approach and services provided at the various middle schools. In light of the variation in the practices, resources and personnel being employed across the District's middle schools, OCR had concerns about whether these factors had been reasonably calculated to effectively implement a sound educational theory.

The evidence that OCR has gathered to date also suggested deficiencies in the implementation of instruction designed to teach English to District's middle school students and provide them access to the core curriculum EL program during the 2013-14 and 2014-15 school years. OCR found evidence that many EL students in District middle schools were not receiving ELD instruction that targeted their proficiency level and that was reasonably calculated to enable them to attain English proficiency and parity of participation in the standard instructional program within a reasonable period of time, as required under Title VI.⁵ Interviews with middle school staff raised concerns that many students received no designated services during the 2013-2014, and that this lack of services was not fully remedied with the adoption of the Replacement Program in 2014-15. Information provided by staff suggested Discovery program was not initially designed to take into account students' language proficiency and educational background, or to differentiate between EL students and EO students with reading deficits, and between EL students who were new to US schools and those who had received many years of instruction in English, thus making it unlikely that students with vastly different needs could achieve English proficiency within a reasonable period of time. The evidence also raised concerns as to whether EL students with disabilities received ELD services to address their language needs.

The evidence also raised questions as to whether EL students received equal access to content area instruction during the 2013-14 and 2014-15 school years. OCR identified a deficiency with respect to students at the lowest levels of proficiency at Bella Vista, who, according to the evidence collected to date, received little or no support during the spring semester of 2014, and whose grades suggest that they were not able to access the curriculum during that time. The evidence reviewed to date suggested that EL students at several middle schools, especially those students with the most limited English proficiency, may not have been placed in classes where they could receive content instruction that they could understand, and that their teachers were not always aware of their needs and of methods of effectively differentiating instruction for them. In addition, the decision to schedule ELD for many EL students during schoolwide intervention periods in 2014-15 resulted in those students missing the opportunity provided to non-EL students to receive special assistance in accessing the core curriculum.

⁵See *Castañeda*, 648 F.2d at 1011.

OCR did not complete its investigation, and reached no conclusions as to whether the District denied EL students a program designed to enable them to learn English and reach parity of participation in the middle school program within a reasonable period of time. In order to complete its investigation and determine whether the District was in compliance with Title VI during the 2013-14 and 2014-15 school years, and whether any areas of noncompliance had been fully remedied since that time, OCR would need to visit District middle schools, review records concerning EL students' program placement and academic achievement, and interview teachers and other site staff regarding the programs provided to EL students.

Prior to the completion of OCR's investigation, the District expressed an interest in voluntarily resolving these issues, and OCR agreed that it was appropriate to do so.

III. Parent Communication

Legal Standard

The May 25th memorandum states that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. School districts have an obligation to ensure meaningful communication with Limited English Proficient (LEP) parents in a language they can understand and to adequately notify LEP parents of information about any programs, service, or activity of a school district that is called to the attention of non-LEP parents.

Facts and Analysis

During interviews with OCR, District staff provided information that suggested a deficiency with regard to communication with LEP parents during the 2013-14 and 2014-15 school years. For example, OCR was informed that at Bella Vista, during the spring 2014 semester, Spanish interpretation services were provided by school security personnel. The use of security personnel to provide interpretation services raised concerns for staff witnesses as well as OCR because of the apparent lack of training of security personnel to provide interpretation services in the classroom. OCR also obtained evidence that, at some schools, teachers informally sought the assistance of Spanish speaking staff to communicate with parents, but communicated only in English with parents who spoke other languages, such as Tagalog. In the 2014-2015 school year, ELA specialists also reported communicating with parents in English through email, or calling their homes with the expectation that a member of the household would speak English.

OCR did not complete its investigation of this issue, and did not obtain comprehensive information concerning the interpretation and translation services provided to LEP parents. However, the information described above suggested a possible deficiency in the District's implementation of a system that ensured that LEP parents received important information in a language they understood.

Prior to the completion of OCR's investigation, the District expressed an interest in voluntarily resolving this issues, and OCR agreed that it was appropriate to do so.

Overall Conclusion

The District entered into the enclosed Agreement, which, when fully implemented, is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with the statute(s) and regulations at issue in the case.

This concludes OCR's investigation of this compliance review 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. OCR is closing the investigation of this compliance review as of the date of this letter.

This letter sets forth OCR's determination 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.

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

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, please contact Katherine Riggs, civil rights attorney, at (415) 486-5544, or Christina Medina, civil rights attorney, at (415) 486-5548.

Sincerely,

/s/

David Christensen
Acting Team Leader

Cc: Dean Adams, Esq.
Enclosure