



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

June 8, 2015

Doc Ervin
Superintendent
Greenfield Union Elementary School District
493 El Camino Real
Greenfield, California 93927-4915

(In reply, please refer to case no. 09-14-1294.)

Dear Superintendent Ervin:

The U.S. Department of Education (Department), Office for Civil (OCR), has completed its resolution of the above-referenced complaint against the Greenfield Union Elementary School District (District). The complaint alleged discrimination on the basis of race/national origin. OCR's investigation addressed the following allegations:

1. The District does not provide students who are English learners with an effective program of English language development (ELD);
2. The District does not provide English learners with equal access to the District's core instructional program until they are fully English proficient.

OCR's resolution activities were conducted under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulations. Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulations.

OCR obtained information from the District and the complainant. OCR also conducted interviews with District administrators and staff, and reviewed documents and records submitted by the District.

Prior to completion of OCR's investigation, the District expressed an interest in resolving the complaint informally. Under OCR's complaint resolution procedures, a complaint may be resolved at any time when, before the conclusion of the investigation, the recipient expresses an interest in resolving the complaint. After discussions with OCR, the District submitted a Resolution Agreement (Agreement) which, when implemented, will resolve the allegations of this complaint. For this reason, OCR did not complete its investigation.

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

The applicable legal standards and the facts gathered during the partial investigation are summarized below.

The Title VI implementing regulations, at 34 C.F.R. § 100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

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

To meet Title VI standards in serving EL students, school districts must select a sound educational theory for their programs for English learners that is likely to meet their educational needs effectively, to use practices, resources and personnel reasonably calculated to implement their educational theory. 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. In addition, districts must evaluate the implementation and outcomes of their services for English learners to determine whether the services are successful in meeting these responsibilities and the program goals set by the district. If not, districts must modify the programs as necessary. See *Castañeda v. Picard*, 648 F.2d 989 (5th Cir. 1981). The May 1970 memorandum also provides 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.

On January 7, 2015, OCR and the U.S. Department of Justice issued a Dear Colleague Letter, which outlines the responsibilities of school districts towards English learner students under Title VI. The letter also provides guidance on the standards used by OCR in evaluating school Districts for compliance with Title VI.¹

OCR's investigation showed the following:

¹ The Dear Colleague Letter can be found at, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

- Greenfield Union Elementary School District (District) is a small district in southern Monterey County. There are four schools in the District: three schools with grade levels K-5th² and one middle school with grade levels 6th-8th.
- In 2014-15, the District served 3448 students in grades kindergarten through eighth.³ There were 2258 EL students (65%), of which 1912 EL students (85%) are Spanish-speakers.

District's 2011 Master Plan for English Learners

- The District has outlined its program for EL students in a brief Master Plan for English Learners (Master Plan) dated spring 2011. Although the Master Plan has not been formally adopted by the School Board, the District informed OCR that it has been implementing the Plan.
- The Master Plan contains an explanation of how the District identifies students whose primary language is not English, a general description of the program for EL students and the support services available to EL students, and a description of the process for redesignating a student from EL to fully English proficient.
- The Master Plan states that all EL students in the District may be enrolled in either the Sheltered/Structured English Immersion (SEI) Program or in the District's Alternative Education Program. District staff members told OCR that they had never received a waiver to have a child participate in the alternative educational program, and that this program therefore is not offered.
- According to the Master Plan, all EL students receive "explicit English Language Learning (ELL)" for at least 30 minutes per day. The Plan describes the materials and instructional resources available to provide ELL instruction, but does not describe how the instruction is to be organized or delivered in order to address each EL student's level of English proficiency.
- The Master Plan also includes a brief description of the support services available for students. These support services, depending on the grade level, include supplementary books and instructional materials; at-risk interventions such as tutoring, computer labs, and after-school programs; and Title I services. No specific guidance is provided on ensuring that EL students are able to access the District's core curriculum.
- The Master Plan includes very little information regarding services to EL students with special education needs. It states that such students are placed in the

² In 2013-14 school year, the District had one school that contained grades K-2 and another one that contained grades 3-6. In 2014-15, both schools contain grades K-5.

³ Data provided by California Department of Education available at <http://data1.cde.ca.gov/dataquest/>.

instructional program that best suits their needs, and the IEP will address how they will receive ELL services.

- The Master Plan states that EL student progress will be monitored using standard State testing instruments and “textbook assessments and teacher assessments.” It does not describe District criteria for expected progress in learning English or academic achievement, nor does it describe how students who do not make adequate progress will be identified and provided appropriate interventions.
- The Plan includes a brief description of the District’s intent to monitor implementation of the EL program, but does not provide for regular evaluation of the effectiveness of the program in teaching EL students English or providing them access to the District curriculum.

Current ELD Curriculum and Program

- According to the District, the elementary schools adopted a new ELD curriculum for the 2014-15 school year called *Language Power* and also use teacher-created materials. At the middle school, the teachers were building a new curriculum for ELD with the goal of implementing it at the beginning of the 2015-16 school year.
- The District provided instructional schedules for the elementary schools that indicated that “deployed” ELD would be provided for 30-45 minutes at two of the elementary schools. The District provided a master schedule for the middle school that showed ELD classes at all levels.
- OCR reviewed the 2013-14 CELDT scores and length in time in the District for EL students at all the schools. Many of the EL students in grade levels 3rd-8th were at CELDT levels one or two, even though they had been in the District for all or most of their school career.
- The District provided the spring 2010 and 2013 state assessment scores in English language arts for reclassified students who were not making adequate progress. A review of this data showed that many of these students were not advancing on the state assessments and many remained at the basic level or below basic level between 2010 and 2013. The data also showed that some students were at the proficient level in 2010, but had fallen to the basic level by 2013. Other students who were at the proficient level in 2010 remained at proficient in 2013.
- It was not clear from the Master Plan or the data that the District has a system to monitor the progress of reclassified students.

Under Title VI standards, school districts have a dual responsibility to teach EL students English as quickly and effectively as possible, and to provide them access to the District's core curriculum. Students in EL programs must receive appropriate EL services until they are proficient in English and can participate meaningfully in the district's educational programs without language assistance services. Each EL student's English proficiency level, grade level, and educational background must be considered to determine which EL program services are appropriate for EL students. When examining a district's program, OCR determines whether (1) the educational theory underlying the language assistance program is recognized as sound by some experts in the field or is considered a legitimate experimental strategy; (2) the program and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and (3) the program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome within a reasonable period of time.

The complaint, and OCR's preliminary data review, raised questions about whether the District was implementing a program that provided English language development services to all EL students, targeted to their English proficiency level, and that was successfully enabling them to attain both English proficiency and parity of participation in the regular program within a reasonable period of time. OCR did not conduct an on-site review of the District's programs to determine whether the District's program, as implemented, complies with Title VI standards.

Prior to the conclusion of the investigation, the District expressed to OCR its interest in reviewing and revising its ELD program and Master Plan. On May 19, 2015, the District voluntarily, and without admitting to any violation of Federal civil rights laws, signed a resolution agreement to resolve the allegations raised in the complaint. The agreement requires the District to retain an EL Director/Coordinator with expertise on the needs of EL students and the development of an EL program to assist it in revising and implementing its *Master Plan for English Learners* so that it describes a comprehensive program of English language services and instruction that meets Title VI standards. The District has also agreed to fully implement the existing Master Plan until the revisions are complete, and to provide OCR with extensive information regarding program implementation. A copy of the agreement is attached.

OCR has determined that the actions in the agreement, when implemented, will resolve the issues in this complaint and is closing this matter as of the date of this letter. OCR will monitor the implementation of the agreement through document reviews and on-site visits.

This concludes the investigative portion of this complaint. 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and other participants who feel that such actions have occurred may file a separate complaint with OCR.

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

Thank you for your cooperation. If you have any questions about this letter, please contact Kana Yang, Civil Rights Attorney, at (415) 486-5382 or Laura Welp, Civil Rights Attorney, at (415) 486-5577.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure

cc: Sarah Levitan Kaatz, Esq. (e-mail only)