



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

July 29, 2020

VIA ELECTRONIC MAIL

Dr. Matt Doyle
Superintendent
Vista Unified School District
1234 Arcadia Ave.
Vista, CA 92084
mattdoyle@vistausd.org

(In reply, please refer to case no. 09-17-1103.)

Dear Superintendent Doyle:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Vista Unified School District (the District). The Complainant alleged that the District discriminated against students on the basis of race. Specifically, OCR investigated the following issues:

1. Whether the District does not provide all English learner (EL) students, including EL students with disabilities, with educational services that are designed to teach them English and that are delivered by teachers with adequate training;
2. Whether the District does not regularly evaluate the implementation and effectiveness of the program for EL students; and,
3. Whether the District reclassifies EL students as fluent English proficient (RFEP) before they are able to participate effectively in grade level content instruction in English without EL services and fails to monitor their progress after they are reclassified.

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 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 regulation.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the District. Pursuant to Section 302 of OCR's Case Processing Manual (CPM) and prior to OCR completing its investigation of this case, the District voluntarily agreed to

address the areas of concern identified by OCR with respect to Issues 1, 2, and 3. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

Legal Standard

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b), provide that a school district 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, a school district 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.

School districts must take affirmative steps to address language barriers so that limited English proficient students (EL students) may participate meaningfully in the District's educational programs. Specifically, the District's language assistance program must be based on sound educational theory; the program and practices of the District must be reasonably calculated to effectively implement the District's educational theory; and the District must evaluate implementation and monitor outcomes of their services for EL students to determine whether the services are successful in meeting these responsibilities and the academic achievement standards set by the District.

Facts Gathered to Date

The District does not currently have an EL Master Plan. The District has been drafting the EL Master Plan over the last three years, but the Master Plan is not yet complete. OCR reviewed the draft EL Master Plan, which does not provide program descriptions that sufficiently explain the EL program at the elementary, middle, or high school levels. Additionally, the draft EL Master Plan does not describe the EL curriculum. The District provided evidence of its EL monitoring platform called Ellevation, which tracks EL and RFEP progress and interventions and is used to initiate the reclassification process, but Ellevation is not referenced in the draft EL Master Plan. According to the Lead Principal for English Language Development (ELD), the result of years without an EL Master Plan has been a fragmented EL program which varies at different school sites.

The District has taken steps to improve its EL program for the 2020-2021 school year. First, the District, due to concerns regarding the quality of ELD, recently adopted Benchmark, a new curriculum for integrated and designated ELD at elementary school sites and provided professional development on this new curriculum to teachers in May and June 2020. The District will also provide professional development on Benchmark in August 2020 before the start of the 2020-2021 school year so that every elementary school teacher will receive a training on Benchmark and a training on ELD. Additionally, the District told OCR that there will be ongoing professional development throughout the school year.

Second, each school site will have an ELD lead teacher starting in the 2020-2021 school year. The ELD lead teacher will provide model ELD lessons and ensure all site staff have the appropriate ELD curriculum and access to ELD professional development. Additionally, the ELD lead teacher is responsible for monitoring each teacher's input regarding EL and RFEP progress and interventions into the monitoring platform, Ellevation. The ELD lead teacher is also responsible for all ELs at the site taking the appropriate assessments and being on the path towards reclassification.

In addition to new elementary school ELD curriculum and new lead teachers for ELD at each site, the District will continue to use Teachers on Special Assignment (TOSAs) who work on EL issues. For instance, the District has TOSAs who work specifically with newcomer students. Additionally, the District told OCR that each school site has robust ELD teams, which will now include the ELD lead teacher.

The District told OCR that it plans to develop and finalize the new EL Master Plan in the next nine months and will continue to use the Ellevation platform for EL and RFEP progress monitoring, intervention monitoring, and reclassification.

Analysis

Pursuant to Title VI, 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. Districts have a dual obligation to implement programs that enable EL students to learn English within a reasonable amount of time and access the district's core curriculum. In order to ensure that their program is successful, districts must monitor the progress of students in learning English and accessing the curriculum and take necessary steps to address the needs of students who are not making adequate progress. They must also modify the program as necessary to ensure its success in teaching students English and enabling their academic success.

Regarding Issue 1, based on the evidence received thus far, OCR is concerned the District has not described a sound educational theory for their programs for English learners because it does not currently have an EL Master Plan and has not had a Master Plan for the last three years. Without a Master Plan, the District's EL program is fragmented and varies across school sites. The District has been drafting the EL Master Plan for the last three years, but the current draft does not contain an adequate description of the EL curriculum or the EL program at the elementary, middle, or high school levels. Thus, OCR is concerned the District does not provide all EL students, including EL students with disabilities, with educational services that are designed to teach them English and that are delivered by teachers with adequate training.

Regarding Issue 2, based on the evidence received thus far, OCR is concerned the District does not regularly evaluate the implementation and effectiveness of the program for EL students. Because the District does not have an EL Master Plan, it is unclear what EL program is supposed to be implemented and monitored for effectiveness. As stated above, the EL program varies across the District's different school sites, which raises questions regarding implementation of any specific pedagogy to enable EL students to learn English within a reasonable amount of time

and access the District's core curriculum. While there is evidence that the District monitors individual EL student progress and interventions through its Ellevation platform, OCR is nevertheless concerned that there is no Master Plan to outline the EL program, how it is implemented, and regular evaluations of the program.

Regarding Issue 3, based on the evidence received thus far, OCR is concerned regarding the District's reclassification of students as RFEP and monitoring RFEP student progress because there is no Master Plan. Typically, a district's Master Plan describes the reclassification process and monitoring of RFEP students. Without such detail in a Master Plan, OCR is concerned the District is operating its reclassification process without up-to-date or approved guidelines. While there is evidence that the District monitors RFEP student progress and interventions and initiates the reclassification process through Ellevation, OCR is nevertheless concerned there is no Master Plan to describe the reclassification criteria, process, and monitoring of RFEP students.

OCR reviewed evidence that the District is in the midst of changing its EL program, including completing its Master Plan, adopting a new elementary ELD curriculum, and establishing ELD lead teachers at every school site. Prior to OCR's onsite visit to the District to observe its EL program, the District expressed interest in resolving this case prior to the conclusion of OCR's investigation and OCR agreed such a resolution was appropriate. Thus, pursuant to Section 302 of the CPM, OCR is resolving this complaint with a Resolution Agreement Reached During the Investigation (Agreement).

In order to complete the investigation, OCR would need to observe ELD classrooms and interview teachers and other staff responsible for ELD implementation, monitoring, interventions, and reclassification. OCR would also need to review additional data regarding special education EL students as well as long-term English Learner (LTEL) and RFEP students.

Conclusion

This concludes the investigation of this complaint.

To address Issues 1, 2, and 3, the District, without admitting to any violation of law, entered into the enclosed Agreement, which is aligned with the allegations and the findings and information obtained by OCR during its investigation. Pursuant to the Agreement, the District will develop and fully implement a Master Plan, which must include, but is not limited to, standards for integrated and designated ELD and provisions for monitoring, intervention, and evaluation. The District will also provide training to all teaching and administrative staff regarding the English Learner program before and after the Master Plan is finalized. Lastly, the District will provide OCR with documentation demonstrating its implementation of the Master Plan, including, but not limited to, demographic information, evaluation of the effectiveness of the EL program, EL students' and RFEP students' standardized test scores, and reclassification data, among other requirements.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When fully implemented, the Agreement is intended to address the concerns identified regarding Issues

1, 2, and 3. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Annie Lee, Civil Rights Attorney, at annie.lee@ed.gov or 415-486-XXXX.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure (1): Agreement