



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

August 28, 2018

**VIA ELECTRONIC MAIL**

Dr. Mark Johnson  
Superintendent  
Fountain Valley School District  
10055 Slater Avenue  
Fountain Valley, California 92708

(In reply, please refer to case no. 09-18-1053.)

Dear Superintendent Johnson:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation into the above-referenced complaint alleging discrimination on the basis of national origin. Specifically, OCR investigated whether the District discriminated against parents and students on the basis of national origin by (1) failing to provide the home language survey and other enrollment-related documents in languages that are accessible to non-English speakers who are not proficient in English or Vietnamese; and (2) asking questions and requiring documents that relate to students' immigration status in its enrollment processes, including but not limited to with respect to the home language survey and online and written application forms.

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 its implementing regulation.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the District and the Complainant, statements provided by the District, and interviews with affected persons. Based on this investigation, OCR found evidence that raised concerns with the District's compliance with Title VI and its implementing regulation with respect to the issues investigated. Prior to completion of OCR's investigation, the District informed OCR of its interest in resolving the complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM) and OCR agreed

that such a resolution is appropriate.<sup>1</sup> The facts reviewed to date, applicable legal standards, and resolution of this matter are summarized below.

### Facts Gathered to Date

#### *Background*

The District is made up of seven elementary and three middle schools. According to California Department of Education (CDE) data, during the 2016-17 school year the District enrolled 6,387 students. 882 students were classified as English Learners (EL), constituting 13.8% of the entire student population. Of those students classified as EL, 59.6% reported Vietnamese as their primary language; 15.31% reported Spanish; 9.98% reported Arabic; approximately 3% reported Japanese or Mandarin; and approximately 1% or fewer ELs listing any of an additional 27 languages as their primary language.

The District reported to OCR that during the 2016-17 school year, the District piloted a new online registration system at two of its school sites. In fall 2017, the online registration system was implemented throughout the District, requiring that all parents now enroll and re-register their students through the new online parent portal on the District's online website.

In an interview with OCR, the District explained that parents wishing to enroll their student in the District are required to first contact the District to be given personal log-in information to access the online system. If parents do not have access to a computer or the internet at home, they can come directly to a school site where they are provided tablets and in-person assistance to complete the registration paperwork online. All parents must also visit the school site to complete a paper component of the registration process.

#### *Language Accessibility of Enrollment Materials*

The District provided OCR copies of its online registration forms in English and Vietnamese. The District does not, as a practice, provide the online enrollment forms in any other languages. According to information provided by the District, 18% of students list Vietnamese as their primary language and for this reason, it provides on-line registration materials, including the Home Language Survey (HLS), in English and Vietnamese. The District reports that parents who do not speak either Vietnamese or English are able to come to a school site to receive in-person assistance with completion of the enrollment forms.

Information gathered from parents in the HLS is used to determine whether a student might be an English Language Learner so that the appropriate testing and placement can take place. The HLS asks questions about language, such as which language the student first learned to speak and the language(s) spoken at home. On the District's online enrollment form, under a section titled "Language Information," the online

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<sup>1</sup> OCR's CPM can be found at: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

enrollment forms ask questions about language that are nearly identical to those asked on the sample HLS on the CDE website.

The District reported to OCR that in or about December 2017, the HLS was removed from the online registration process and that only the in-person registration process will gather the information needed through the HLS. The District informed OCR that the District currently uses the HLS samples that are found on the California Department of Education (CDE) website as part of the in-person portion of the registration process. According to the District, while the HLS questions remain on the on-line enrollment form, the District stated that it relies on the answers provided by parents when they visit the schools to complete registration. The District provided printouts in six languages of the CDE HLS (revised December 2016). The printouts do not identify the District at the top and do not currently appear on the District's website in their enrollment forms area. Instead, on the website under a section titled "Additional Documents," it states "Home Language Survey will be provided during registration." The District told OCR that it trained all office managers in the new HLS process and showed them how to access the CDE website to access the HLS in additional languages outside the 5 most common within the District, which were provided during training. As supporting documentation, the District provided a sign-in sheet dated December 1, 2017 and an agenda dated December 13, 2017, which has "HLS" listed as an agenda item.

The District's website has online translation capabilities such that some of its information regarding enrollment can be translated to various languages through this online translation option. The translation system does not extend to the registration portal, however, which provides only English and Vietnamese as language options. The information on the website in the registration portal includes a phone number to call for questions and states that online enrollment is available year round. It does not state that online assistance and additional language assistance is available at individual school sites.

The District web site includes a page on "Transfers", which provides instructions to parents who wish to request student transfers into the District and among schools in the District. The web page includes links to applications for interdistrict and intradistrict transfers, and to a document entitled "FVSD Proof of Residency," all in pdf format. While the web page can be electronically translated into multiple languages, the pdf attachments cannot be translated, and there is no information on the web page as to the availability of the documents in languages other than English.

#### *Questions asked during Enrollment Process*

According to the District, as part of a December 2017 review of its HLS practices, it removed from its HLS a fifth question that had two subparts. Those questions were (a) in what country was your son or daughter born? and (b) if born outside the U.S., what was the date of first entry into the U.S.? As described above, the District stated to OCR that it stopped using its previous HLS form and trained school site staff on the CDE printouts of the HLS. The CDE printouts of the HLS in different languages provided to OCR by the District do not include the fifth question that appeared on the Districts

earlier version of the HLS. On December 15, 2017, the District provided OCR an undated in-person enrollment packet that includes the HLS with the questions that the District reported to OCR were removed from circulation as of December 1, 2017.

In addition to the HLS, the online enrollment forms ask several questions about a student's national origin, how long the student has been in this country, and whether the student has attended school outside of the District in another country. Under "General Information," the online registration forms ask in what country and state the student was born.

Under a section titled "Other District Enrollments," the online system asks whether the student was born in the United States; what date the student entered the United States; and whether the student previously attended a school in the United States. In addition, in a section titled "Enrollment Confirmation," it asks the student's birth country and the date the student first entered a K-12 school in the United States. None of these questions are listed as optional and there is no explanation as to how the information collected will be used by the District. In addition, if a student is not identified as having attended schools outside of the United States, an enrolling parent is directed to the next page and not required to answer follow up questions. However, if a parent indicates that the student did attend school(s) outside the United States, additional questions appear, including the date of a student's first enrollment in school in the United States and whether they have previously attended school in the state of California.

Under "Required Information," the online enrollment forms include a list of documents parents are required to bring to the school site on the day of in-person registration: Proof of Residence; Immunization Records; and Student Birth Certificate. No alternative documents are listed nor are provisions made for circumstances in which certain documents are not accessible to families of different national origins.

Included in the in-person packet is a "New Student Pre-Enrollment Documentation Checklist." It lists as required documents a student's birth certificate and the Home Language Survey (HLS). The District told OCR it required parents to provide a birth certificate in order to verify a student's date of birth. The packet also includes a "permanent record card" (last revised 2/22/16). It includes sections for the child's birth date, city of birth, and state/country of birth. This document was provided to OCR in English and Vietnamese. Included on the form is a box for office use only that includes a space for "Verification of Age," which lists several documents that may be used to verify a student's age, including passport; health/vital statistic; birth certificate; baptismal certificate; and affidavit.

The District's Board Policy and Administrative Regulation 5111.1(a) (adopted January 12, 2017; last revised August 28, 2017) outline the requirements for establishing District residency and are not identical to the requirements listed in the Checklist at school sites. According to District policy, residency within the District's jurisdictional boundaries can be established by providing one of the following:

- A driver's license (any photo driver's license or CA ID Card is permitted);

- A passport with photo ID; or
- If an agent or representative of social services or foster care agency, appropriate identification.

In addition, to verify their name and address, parents can provide one of the following: a deed to a home; mortgage or escrow paperwork; a property tax bill; a rental lease with a copy of deposit receipt or monthly rental receipt; or a tax return. In addition, parents are to provide one of a range of documents, including a current utilities bill (multiple options are listed) that included name and service address or verification of connection; current social services documents, automobile registration or insurance; or a current cable bill, also to verify name and address.

### Legal Standards

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)(1)(v) states that a school district may not, directly or through contractual or other arrangements, on the basis of national origin treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility or other requirement which must be met to receive any service, financial aid, or other benefit. In addition, Section 100.3(b)(1)(iv) states that a school district may not, directly or through contractual or other arrangements, on the basis of national origin restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.

To determine whether a student or parent has been discriminated against on the basis of national origin under Title VI, OCR looks at whether there is evidence that the student or parent was treated differently than students or parents of other national origins under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's or parent's national origin.

On July 17, 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" (May 25, 1970), reprinted in 35 Fed. Reg. 11,595 (July 18, 1970) (hereinafter May 25th memorandum). The May 25th 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 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.

School districts must develop and implement a process for determining whether parents are LEP and identify their language needs. The process should be designed to identify all LEP parents, including parents or guardians of children who are proficient in English and parents and guardians whose primary language is not common in the district. It is important for schools to take parents at their word about their communication needs if they request language assistance. School districts must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and training in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

Under the Title VI regulations, at 34 C.F.R. §100.3(a) and (b), a recipient may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of the services, benefits, or opportunities it provides. Section 100.3(b)(2) provides that a recipient may not, directly or through contractual or other arrangements, use criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

To determine whether a school district's policy or practice has an unlawful disparate impact on the basis of race, color or national origin, OCR examines: (1) whether a policy or practice that is neutral on its face has a disproportionate, adverse effect on students of a particular race or national origin; (2) whether the discipline policy or practice is necessary to meet an important educational goal (i.e., whether there is a substantial, legitimate educational justification); and (3) if so, whether there is an alternative policy or practice that would result in a lesser disparate impact and be comparably effective in meeting the school district's objectives.

### Resolution

*Issue 1: Whether the District discriminated against parents and students on the basis of national origin by failing to provide the home language survey and other enrollment-related documents in languages that are accessible to non-English speakers who are not proficient in English or Vietnamese.*

School districts may not discriminate against Limited English Proficient (LEP) parents by failing to provide important materials in a language that they can adequately understand. Information regarding how to enroll at the School, how to transfer schools,

and how to fill out the HLS to ensure access to needed EL services are all important materials to parents. Here, the evidence shows that the District provides enrollment-related materials, including on line registration forms, in English and Vietnamese, the most used languages within the District. Transfer applications are provided only in English.

With respect to how the District provides access to enrollment-related materials to LEP parents who are not Vietnamese speakers, the District asserts that it provides translation assistance for LEP parents who come to District school sites for online enrollment assistance. The District's website, however, does not explain the enrollment process for parents who do not speak Vietnamese or English. For example, the website does not explain that for language assistance in languages other than Vietnamese or English, LEP parents should go to the school site.

With respect to the in-person portion of the enrollment process (the language survey), the District reported to OCR that as of December 2017 it has provided the HLS in the top six languages in the District and that it trained its frontline staff in December 2017 on how to access the HLS for any other languages parents who are enrolling their students might speak. The District also states that it provides translation services for completing the online enrollment process.

OCR has concerns that the District's enrollment process may not adequately notify national origin minority group parents of information that is called to the attention of other parents. Specifically, the District did not provide documentation showing how translation assistance is provided, that frontline staff have received aligned guidance on how to provide such assistance, or that such information about the language assistance options is provided to enrolling parents in the languages that they speak. While the District asserts that this has not been an issue for enrolling parents and that parents know to come to the school sites for assistance, OCR would have to conduct further investigation to confirm these statements. Accordingly, OCR has not reached a compliance determination regarding this matter.

To reach a compliance determination on this issue, OCR would need to review additional data and conduct additional parent and staff interviews regarding whether the District has an adequate system for ensuring that those who do not speak, read, or write English are provided assistance beyond completion of the HLS when enrolling their students in District schools or for students applying for transfers.

*Issue 2: Whether the District discriminated against parents and students on the basis of national origin by asking questions and requiring documents that relate to students' immigration status in its enrollment processes, including but not limited to with respect to the home language survey and online and written application forms.*

As is outlined above, the District reported that all schools within the District implemented the online enrollment system in the fall 2017 following a limited pilot of the program during the 2016-17 school year. The District informed OCR that in December 2017, it

reviewed its practice with respect to the HLS and removed two additional questions from the online questionnaire that solicited information not necessary to the determination of a student's possible eligibility for EL services and that non-LEP parents of children born in the United States are not required to answer.

The District's current online enrollment forms ask additional questions of parents whose children were born outside the United States that are not asked of other similarly situated parents, thus requiring them to provide additional personal information based on a student's national origin. Parents who answer that their student was born in the United States are not asked to answer the remaining questions. OCR is concerned that requesting this different and additional information in such a manner may create a burden on parents based on national origin, particularly where, as here, the District does not explain to parents and students why this information is mandatory for enrollment and whether such information is being used to deny or restrict enrollment based on national origin. Such additional requests for personal information may also create a barrier to enrollment by discouraging parents of different national origins from fully completing the enrollment information and/or proceeding with the enrollment process.

OCR also identified evidence that the District has multiple means of gathering this data, including those means listed on the District's permanent record card and the alternatives presented in its Board Policies and Administrative Regulations, but its mandatory registration online portal does not include those means.

School districts may require documentation of parents for such purposes as to establish residency within the district's jurisdictional boundaries and to verify a student's age. In this case, the District provided OCR multiple and inconsistent lists of required documents that include some requirements that may unnecessarily discourage parents from completing the enrollment process based on their national origin. For example, the online registration forms require that a student's birth certificate be provided on registration day, while the "permanent record card" lists various alternatives for verifying a student's age, including a passport, an affidavit, or a health statistic, which may have less chance of negatively impacting students and their parents access to the educational programs and activities of the District based on national origin. Additionally, the District's BP/AR 5111.1(a) provides multiple additional options for documents that a parent may provide to verify identity and to establish residency within the District's boundaries, which are not reflected in the online registration form that is now the principal enrollment mechanism for families in the District. For individuals from other countries who live in the United States, but who may not have access to such documents from their countries of origin, the District's requirement may prevent parents from enrolling their children in the District, or may serve as a deterrent to their completion of the process.

Prior to completion of the investigation, the District expressed an interest in voluntary resolution pursuant to Section 302 of the CPM. Accordingly, OCR did not reach a compliance determination with respect to this issue. To reach a determination, OCR



would need to conduct further interviews and review data to determine whether the document requirements in the District's enrollment and registration process subjected some parents to discrimination based on national origin.

### Overall Conclusion

Prior to completion of OCR's investigation, the District requested voluntary resolution pursuant to Section 302 of the CPM, and OCR agreed that such a resolution would be appropriate to resolve the issues and concerns raised. For this reason, OCR did not complete its investigation or reach conclusions as to whether the District violated Title VI and its implementing regulations in connection with these allegations.

Based on the commitments made in the enclosed Resolution 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 Resolution Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

This concludes the investigation of this complaint. OCR's determination in this matter should not be interpreted to address the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Recipient 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 Complainant 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact Maria Asturias, the Civil Rights Attorney assigned to this case, at 415-486-XXXX.

Sincerely,

/s/

Ava DeAlmeida Law  
Acting Team Leader

Cc: XXXXXX XXXXX (via email only)