



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

July 15, 2019

**VIA ELECTRONIC MAIL ONLY**

Kyla Johnson-Trammell, Ed.D.  
Superintendent  
Oakland Unified School District  
1000 Broadway, Suite 150  
Oakland, California 94607  
[superintendent@ousd.org](mailto:superintendent@ousd.org)

(In reply, please refer to OCR Docket Number 09-18-1601.)

Dear Dr. Johnson-Trammell:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Oakland Unified School District (District). The Complainant alleged that the District discriminated against the Student on the basis of national origin.<sup>1</sup> Specifically, OCR investigated whether the District failed to provide the Student, an English learner, with instruction designed to teach him English or provide him access to the high school curriculum since the Student began high school in the District in 2014.

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.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. Prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so.<sup>2</sup> The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

**Legal Standard**

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

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<sup>1</sup> OCR previously provided the District with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

<sup>2</sup> See, <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>. (July 15, 2019).

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" (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 take affirmative steps to address the language needs of limited English proficient students (English learners or EL students).

In addition, Title VI and the May 25th memorandum requires 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. OCR also reviews the educational program to see whether it succeeds in producing results indicating that the students' language barriers are being overcome in a reasonable period of time. 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. Districts 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.

With respect to evaluation, districts must validly, reliably and annually measure EL students' performance on the state English language proficiency assessment and in academic content areas. Monitoring systems should include benchmarks for expected growth and ensure that EL students are making appropriate progress with respect to acquiring English and content knowledge while in the EL program. Districts should take appropriate steps to assist students who are not adequately progressing towards those goals and modify EL programs as necessary, if the dual obligation is not being met.

#### Facts Gathered to Date

The Student, an English learner originally from XX XXXXXXXXX, entered the District as a seventh grader in August 2012. He was enrolled in his middle school's Newcomer program for English learners, taking classes specifically designed for students new to education in English, for two school years. According to the Student, this program worked well for him, and he received the assistance he needed from his teachers. During the 2012-13 and 2013-14 school years, the Student's grades were mostly Cs.

In fall 2014, the Student transitioned to High School 1, where he was placed in mainstream courses and a reading intervention class. According to the Student and his guardian, he was the only student in his classes who spoke Spanish, and he did not understand the instruction or know how to do many assignments. The Student told OCR that the teachers in these classes did not approach him to provide help, and he was too shy to ask for help. During the 2014-15 school year, the Student's grades fell to mostly Ds and Fs and his attendance began to decline.

The Student remained at High School 1 for his second year of high school. During the 2015-16 school year, he continued to take mainstream courses, in addition to an English language development (ELD) 3 course. His grades continued to fall to mostly Fs, with his only non-F in ELD 3. His attendance continued to decline. The Student took the California English Language Development Test (CELDT) (the state English proficiency exam in use at the time) in October 2015 and scored in the beginning range. This was the Student's last English language proficiency assessment. The Student also enrolled in High School 1's summer program for English and Math, but earned no credits.

In fall 2016, the Student enrolled at High School 2 for his third year of high school, but transferred a few weeks later to an XXXXXXXXXXXX XXXXXXXX school.

In fall 2017, the Student returned to High School 2 for his fourth year of high school, where he was enrolled in mainstream courses exclusively, repeating much of his ninth and tenth grade course work. According to the Student, his courses were assigned to him, and no one talked with him about taking courses for English learners. That school year, the Student earned Fs in all classes except for XXXXXXXXXXXX XXXX and XXXXXXXX.

In spring 2018, an advocate became involved in the Student's education. At her request, with the consent of the guardian, the Student was evaluated for special education eligibility purposes. The Student was found ineligible for special education at that time, primarily because of the District's difficulty in determining whether his low scores resulted from a disability or from his interrupted education.

As a result of the advocate's intervention, the District placed the Student in English and Math courses for English learners for the summer 2018 session at High School 2. Though the Student attended most of the three-week summer grade period, he either missed too many classes or turned in too little work to obtain credit for these courses. The Student told OCR that he was not confident in his academic skills and that made it hard to go to class.

In fall 2018, the Student was placed in High School 2's Newcomer program for his fifth year of high school and enrolled in an ELD course and other courses designated for English learners, as well as a reading intervention course and electives. The Newcomer program teachers are trained in strategies for supporting students with gaps in education and limited English. The Student's attendance difficulties continued; as of December 4, 2018, he had a GPA that was below a 1.0, and he had completed 55 credits out of the 245 required to complete 230 credits in order to graduate.

OCR spoke with the Student, his guardian, several of his current teachers, and other adults who had worked with him about his academic progress. Many of the Student's teachers stated that they had difficulty assessing his academic needs due to his frequent absences. Several stated that the Student lacked confidence in his abilities and had difficulty with academic language, but he asked questions and seemed to understand things better after some one-on-one time. Several of the other adults who had worked with the Student stated that he had not mastered fundamental skills, especially in math and English, and that, as a result, he often did not understand classroom instruction. The Student and several of these adults also stated that he worked best in small classroom settings and with one-on-one instruction.

The evidence that OCR has reviewed to date suggest that the Student's limited attendance in his classes during the past several years may have resulted, at least in part, from his inability to understand instruction during the first several years of high school, as well as from mental health challenges. Because the District agreed to resolve this complaint prior to the completion of OCR's investigation, OCR did not reach conclusions as to the reasons for his lack of attendance.

In January 2019, the District concluded that the Student is eligible for Section 504 supports intended to address two areas of concern – levels of academic achievement and attendance. In May 2019, the District notified OCR that the Student had been found eligible for special education, and that an individualized education program (IEP) was being developed for him.

#### *Program for English Learners at High School 2*

The District has adopted a program for English learners, set forth in a Master Plan adopted in November 2016, which describes programs for EL students at all grade levels and proficiency levels. One of the key requirements of the Master Plan is that all EL students must receive English Language Development instruction that is targeted to their English proficiency level. The Master Plan, and additional guidance provided by the District, require that EL students at the secondary level, receive targeted ELD instruction, regardless of their English proficiency or the length of time they have been enrolled in EL programs.

The District has established Newcomer programs at three elementary schools and 13 secondary schools, which are designed to provide intensive support in language, content, cultural knowledge, and social emotional skills to students who have been in US schools for less than three years. One of the high school programs is located at High School 2. The Student attended a Newcomer program during sixth and seventh grade. High School 1 does not have a Newcomer program.

According to teachers and administrators in the Newcomer program at High School 2, students in the program receive ELD instruction and instruction in content areas that is specially designed for EL students. The program is designed to enable EL students to receive increasing amounts of instruction in mainstream classes as they become more proficient in English. Most students in the program had limited or interrupted schooling prior to arriving in US schools, and students are grouped for instruction according to their degree of prior schooling as well as their English proficiency level. In general, students are expected to move into the mainstream program after three years in the Newcomer program, but students with extremely limited prior schooling can remain in the Newcomer program for an additional year. While they are in the Newcomer

program, students' progress is closely monitored and academic and social-emotional interventions are available to students who are not successful.

Students are placed in the Newcomer program based on a "tag" assigned to them in the District office, beginning when they enter the District. School administrators stated that students are not always correctly tagged, and a student who is new to the school, especially a student arriving from middle school, might not receive the newcomer tag, and therefore might not be placed in the program, especially if he/she has some proficiency in English. They speculated that the Student, who had spent two years at High School 1 before entering High School 2, no longer had a newcomer tag and was therefore placed in the general school population.

School staff and administrators informed OCR that students who are not in the Newcomer program do not receive designated ELD instruction. They stated that, instead, EL students who enter High School 2 as non-newcomers, as well as those who complete the Newcomer program, received the same language supports as all other students, and teachers were not expected to give EL students different instruction from others, beyond an expectation that instruction will be "scaffolded" to assist EL students in understanding it. The progress of EL students who are not in the Newcomer program is not monitored, except to the extent that all students are monitored for grades and credit completion.

Before OCR completed its investigation, the District expressed an interest in resolving the matter voluntarily through a Section 302 agreement. OCR therefore did not complete its review of the instruction that the Student received prior to the 2018-19 school year, the process through which his prior placements were determined, the full impact of any prior gaps in his program, or the instruction generally provided to EL students at School 2 who are not enrolled in the Newcomer program.

#### Determination

Under Title VI, schools and school districts are required to provide all English learner students with instruction that is designed and reasonably calculated to enable them to attain fluent English proficiency within a reasonable amount of time, based on their level of English proficiency. Schools must also ensure that EL students receive accessible instruction in content areas, so that they do not incur irreparable deficits while they are learning English. These services must be provided until students have attained full proficiency in English and are able to participate equally in the regular instructional program. Schools must monitor student progress while they are learning English and take the steps that are necessary to ensure that deficits are addressed.

OCR's review of educational services provided to the Student raised a concern that prior to June 2018, the District largely failed to provide the Student, an English learner, with (a) instruction designed to teach him English and (b) access to the curriculum. When the Student transitioned from a Newcomer program at a middle school within the District to high school, he was placed entirely in mainstream courses, although he still was an English learner who, according to his test scores, scored at the beginning level of English proficiency. The Student informed OCR that he did not understand what was happening in those classes, and school records show that his grades declined. During his second year of high school, the Student was placed in mainstream classes and an ELD 3 course. His grades continued to decline, with his only non-failing grade in

his ELD 3 course. When the Student enrolled in High School 2 in fall 2017, he was again placed in all mainstream courses, even though his score on his last English language proficiency assessment, and his prior placement in an ELD 3 course, indicated that he was an English learner. During the 2017-18 school year, the Student continued to have poor grades, yet the evidence that OCR reviewed indicated that he did not receive services to address his limited English proficiency until June 2018, after an advocate became involved in the Student's education. As explained by the Student and others, prior to this change, the Student's teachers in his mainstream courses did not speak Spanish, he did not understand what was happening in those courses, he found it difficult to ask for help from his teachers, his teachers did not offer enough one-on-one support for him to understand what he was to do or what was being taught, and as a result, he failed courses, lost confidence in his academic skills, and often felt anxious or overwhelmed being in class or at school.

Although the District placed the Student in High School 2's newcomer program over the summer of 2018 and for the 2018-19 school year, the evidence gathered to date raises concern that the Student remains unable to access the high school curriculum, in that he continues to struggle with confidence and anxiety with respect to academics, and he lacks the fundamentals of math, reading, and writing needed for him to succeed academically. The evidence raised concerns that the Student did not receive instruction designed to teach him English and provide him meaningful access to the curriculum prior to June 2018, and that, as a result, he may have been unable to succeed in his academic program after that time.

OCR's review of the educational services provided to the Student also raised concerns regarding the services available at High School 2 for students like the Student, who are not newcomers, but who remain English learners. Although the District has adopted a program design requiring that all EL students receive ELD instruction until they are reclassified as fluent English proficient, the evidence reviewed to date indicates that designated ELD classes are not available outside of the Newcomer program, teachers outside the Newcomer program provide only limited specialized services to EL students, and key staff do not consider students outside the Newcomer program to be EL students in need of a language program. Moreover, the evidence does not establish that the progress of these students is monitored, or that any special steps are taken to ensure that they learn English and do not incur irreparable deficits in accessing the core curriculum. Thus, although the District has adopted a program for English learners designed to address the needs of students at all levels of proficiency, the evidence raises concerns that this program is not implemented for students who are not classified as newcomers.

### Conclusion

To address the concerns raised in this investigation, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation. Under the Resolution Agreement, the District will convene a group of knowledgeable persons to determine appropriate supports for the Student to address his needs as an EL student with disabilities as a result of any lack of appropriate EL services from September 2014 to June 2018, including individual tutoring services. The District also will create and implement a plan for providing services to EL students at High School 2 who are not enrolled in the school's Newcomer program, to include the following three elements – a description of ELD instruction to be

provided to students who are not enrolled in the school's Newcomer program; a description of the methods by which the School will monitor the progress of these students in learning English and accessing the core curriculum, as well as the interventions that will be provided to students who are not making expected progress; and training on content-based and integrated ELD for non-Newcomer program teachers.

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.

OCR's determination in this matter 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. 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 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, 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 regarding this letter, please contact Monique Raco Fuentes at 415-486-XXXX or Katherine Riggs at 415-486-XXXX.

Sincerely,  
/s/

Kana Yang  
Team Leader

Enclosure

cc: Janette Puccetti, Office of General Counsel for the District, via email