



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

March 19, 2020

VIA ELECTRONIC MAIL

Ms. Kari Yeater
Superintendent
North Monterey County Unified School
8142 Moss Landing Road
Moss Landing, CA 95039
XXXXXXXXXX

(In reply, please refer to case # 09-19-1368.)

Dear Superintendent Yeater:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the North Monterey Unified School District (District). The complaint alleged discrimination on the basis of national origin. Specifically, OCR investigated the following issues:

1. Whether teachers at the Prunedale Elementary School (School) do not provide students who are English learners (EL) with educational services that are designed to teach them English until they are fully English proficient; and
2. Whether teachers at the School fail to provide limited English proficient (LEP) parents with important information in their primary or home language about classroom activities, when such information is provided to English-speaking parents.

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 relevant documents and by conducting an onsite investigation of the School's program for EL students, which included interviews of School staff.

Prior to OCR completing its investigation of Issue 1, the District voluntarily agreed to address the areas of concern identified by OCR with respect to this issue. Regarding Issue 2, after careful review of the information gathered in the investigation, OCR concluded that the District did not violate Title VI with regard to this issue. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

Issue 1: Whether teachers at the School do not provide students who are ELs with educational services that are designed to teach them English until they are fully English proficient.

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 (English learners or 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 Thus Far

Instructional Program & Access to Core Curriculum

According to the District's Master Plan, English Language Development (ELD) instruction must be part of the daily core curriculum for every EL student. For TK-6 grade students, ELD grouping must be based on their English proficiency level, with ideally one English proficiency level per class. The Master Plan further states that whenever possible, no more than two levels of

ELD will be combined into one class. ELD progress will be monitored throughout the year and reorganization of ELD groupings will be considered for the optimal instructional setting.

According to the School's narrative response, ELD is both integrated in the core subjects throughout the instructional day and in designated ELD instructional blocks, that range from 30 minutes in K to 45 minutes in 5th and 6th grades.

OCR conducted an onsite visit to the School to observe program implementation and spoke to several teachers. Based on teacher interviews and review of class rosters, in each grade, OCR confirmed that students were assigned to a designated ELD period based on their English language proficiency assessment (ELPAC) level. Grade-level teachers, particularly for the younger grades, reported that they moved students to different levels based on ongoing assessments. Multiple teachers reported they assessed EL students for ELD progress based on classroom observation. A few other teachers also stated they looked at student writing samples and assessment scores. With respect to access to core instruction, OCR confirmed that teachers were employing a range of strategies, including primary language instruction in bilingual classrooms at the lower grades. In other classrooms, OCR observed teachers using strategies to support EL students, including visual cues, scaffolding and general sheltering strategies. OCR confirmed that the textbooks and other curricular materials also contained strategies for EL students.

Instructional Program: Interventions

The Master Plan describes a monitoring and intervention process requiring teachers to develop individual EL Intervention Catch-Up Plans (Catch-Up Plans) for EL students who are not making adequate progress. Neither in the narrative response nor in interviews did School staff identify catch up plans in development or use.

The Master Plan does not discuss any elementary school interventions for long-term English learners (LTEL) students, defined as students who have more than six years of uninterrupted schooling in the United States. Instead, the Master Plan includes several provisions regarding secondary LTEL students.

OCR reviewed data regarding EL students' performance and what interventions, if any, struggling EL students were receiving. Specifically, OCR reviewed data regarding current 5th and 6th grade ELs at the School who have a 2018-2019 ELPAC score of 1, far below the standard of a score of 4 needed reclassification, and within this group of potential or current LTELs, OCR separated out those who were identified for special education. Two-thirds of the 5th and 6th grade students scoring 1 on the ELPAC and are not in special education have been in the District for five or more years, including two students who have been in the District for six years.

When asked about interventions, the District and School told OCR about programming which is not tailored or specific to EL students. For instance, there is an afterschool program at the School, where students below grade level get priority. The District also received a grant to implement summer school in summer 2019. According to the School, there are instructional aides who can support any struggling student by working in small group or re-teaching the concepts. When asked about programs or services for LTELs or potential LTELs, the School told OCR that some teachers use computer-based programs.

During OCR's onsite visit, OCR asked District and School staff about what interventions were available to the EL students who were on their way to becoming LTELs. The District responded that it is currently implementing Multi-Tiered Systems of Support (MTSS). The District described Tier 1 as high-quality instruction for all students. Tier 2 is targeted support for a student who is not responding to Tier 1. The District provided examples of Tier 2 supports, including: one-on-one reading help from an outside organization; push-in support by instructional assistants for students with and without disabilities; and, targeted support outside the classroom during the school day. When asked if there are any EL-specific Tier 2 supports, the District responded that there is afterschool support from two aides, the library clerk, and a bilingual clerk and there is a special education aide for ELD. Lastly, the District described Tier 3 support which is special education services. There is no general education Tier 3 intervention. Aside from MTSS, the District and School also described an EL Specialist who comes "on call" to assist with ELPAC testing, and he does not provide push-in support for EL students.

OCR also spoke to teachers about interventions for EL students. Teachers were able to identify which EL students in their classroom are struggling based on assessment scores and classroom observations, but they stated there are no outside-of-class interventions to assist these students. They confirmed that Tier 2 interventions, as described above, generally were not available. Overall, teachers expressed frustration that there are no supports for struggling EL students who are not in special education, and they were concerned about potential LTELs who have no interventions in place.

Monitoring Program Implementation and Student Progress

The Master Plan describes obligations to monitor program implementation and monitor EL student progress. First, regarding monitoring of program implementation, the Master Plan contains detailed requirements for the District to conduct an annual evaluation of programs and services for EL students. When OCR requested information regarding EL monitoring, the District described how School staff review a variety of assessments for EL students, but there was no mention of the annual EL evaluation described in the Master Plan.

Second, regarding monitoring of student progress, the Master Plan requires language proficiency and academic progress of EL students be evaluated and monitored on an ongoing basis throughout the year. The Master Plan also lists a variety of assessments used to determine EL proficiency and academic performance, and the frequency of these assessments.

According to the District's data response, teachers are responsible for monitoring EL students' progress by reviewing a variety of assessment data. When asked about monitoring LTELs, the School reported to OCR it did not have a current list of LTEL students but could pull a list by looking at upper grade EL students and their scores on the California Assessment of Student Performance and Progress (CAASPP).

OCR reviewed data 2018-2019 scores from the Smarter Balanced Assessment Consortium (SBAC) for 5th grade EL students in the 2018-2019 school year who were at levels 3 and 4 on the 2017-2018 ELPAC. All the students who had SBAC scores available as of September 6, 2019 were receiving a 1 or 2 in ELA or Math, meaning their scores are below state standard.

Reclassification

The Master Plan describes the four criteria for reclassification: (1) level 4 on the ELPAC with an oral and written overall score of 3 or higher and no more than one sub-score in each domain below a 2; (2) demonstration of basic skills using a variety of metrics depending on the student's grade level; (3) teacher evaluation of student academic performance; and, (4) parent consultation.

The Master Plan also details follow-up monitoring for students who are reclassified fully English proficient (RFEP). The District must monitor RFEP students for two years after the official reclassification date. According to the Master Plan, the school site will receive a roster of RFEP students from the Educational Services Department and will use the monitoring section of the Reclassification Form to track academic progress each quarter or each trimester for two or three years after classification. If a RFEP student's grades drop below "basic" in grades K-6, then the school reevaluates the student's progress and develops interventions, which may include the EL Intervention Catch-Up Plan, described above.

According to the School, RFEP monitoring is the responsibility of teachers, who review a variety of student assessments. The interventions for RFEP students were the same as described above for EL students, including MTSS.

OCR reviewed 42 reclassification files from the 2018-2019 school year. OCR asked the District and School about specific student reclassification files, which did not align with the reclassification requirements. For instance, one student was reclassified using his math score. Some students' reclassification form was missing data, for instance, no ELPAC score was listed.

The School told OCR that teachers may not clearly understand what the reclassification form requires.

OCR reviewed the preliminary 2018-2019 SBAC scores for students who were reclassified during the 2017-2018 school year. Based on the SBAC scores the District sent to OCR on September 6, 2019, OCR found that six of the RFEP students did not meet ELA standards and 12 did not meet Math standards (including two students who did not meet both ELA and Math).

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.

Based on the facts gathered thus far and OCR's 2019 visit, OCR has concerns that the District has not taken adequate steps to design and implement a program at the School that meets the requirements of Title VI because there is no articulated program design for EL students not making adequate progress, insufficient interventions for ELs, including potential or actual LTELs, and insufficient monitoring of ELs, LTELs, and RFEP students.

OCR confirmed that the School provides ELD instruction through deployment by proficiency level at the classroom level. Consistent with the District's Master Plan, the School groups students such that there were no more than two proficiency levels per ELD class. OCR further confirmed that the School has identified materials in place. With respect to core instruction, teachers demonstrated a variety of strategies to provide students with access. In general, teachers were aware of the needs of their students, their proficiency levels, and which students were not demonstrating adequate progress.

However, OCR identified some areas of concern. First, OCR is concerned with the insufficient interventions for ELs as described in the District's Master Plan and as seen in practice at the School. Though the Master Plan describes an EL Catch-Up Plan, there was no evidence of such formal Catch-Up Plans being implemented at the School. Beyond the Catch-Up Plan, the Master Plan does not describe other interventions for EL students not making progress towards English language proficiency. Although the District identified MTSS interventions as ones to be used for

students in general, OCR is concerned that the District has not identified interventions for upper elementary EL students who are not making expected progress in English proficiency. The Master Plan as currently written does not contain any intervention strategies for potential or actual LTELs in upper elementary grades and instead focuses all interventions on LTELs in secondary school.

The evidence gathered shows two-thirds of non-special education 5th and 6th grade EL students scoring 1 on the 2018-2019 ELPAC have been in the District for five or more years, including two students who have been in the District for six years, thus meeting the Master Plan's definition of an LTEL student. The Director and Principal told OCR there are no EL-specific interventions for these students but rather general assistance such as after school programming or summer school. OCR is concerned that these long-time District EL students, who are not in special education, have not made adequate progress and are not receiving any specific interventions.

Similarly, teachers told OCR there are no out-of-class interventions for non-special education EL students. Though the School has an EL Specialist who comes "on call," he does not provide push-in support for EL students. The teachers also reported to OCR that the District identified MTSS Tier 2 supports, such as one-on-one reading help from an outside organization, push-in support by instructional assistants, and targeted support outside the classroom during the school day, were not available for EL students. Furthermore, there are no Tier 3 supports for EL students who are not identified as special education as Tier 3 is limited to special education students only. The District and School reported that there is after school and public library help, but these are not considered interventions because they do not occur during the school day. OCR is concerned that the evidence thus far shows struggling EL students, including LTELs, and little to no interventions to assist them.

OCR also has concerns about the District's monitoring of outcomes for EL, including LTEL and potential LTEL, students. The evidence thus far indicates that monitoring is primarily a teacher responsibility, yet teachers cited primarily classroom observation when asked how they monitor ELD progress. Though teachers expressed concern about EL students becoming LTELs, there does not appear to be any monitoring of these potential LTELs and provision of interventions. The School does not have a current list of LTEL students. OCR reviewed the data on potential LTELs, specifically 2018-2019 SBAC scores for 5th graders in the 2018-2019 school year who were at levels 3 and 4 on the 2017-2018 ELPAC, and found that, based on the available data, these students were not meeting state ELA or Math standards. This data suggests that the District may not be meeting its responsibility to teach students English and to provide them with access to the curriculum, so they are not left with academic deficits.

Aside from the programmatic concerns described above, the evidence also raises concerns about the District's reclassification process. The Master Plan states the District must monitor RFEP students for two years after the official reclassification date. OCR reviewed 42 reclassification files and noted some inconsistencies among the files, which suggested some students barely met the requirements for reclassification. Even more concerning was the 2018-2019 SBAC scores for students reclassified during the 2017-2018 school year. Despite being reclassified, OCR found that six of the RFEP students did not meet ELA standards and 12 did not meet Math standards (including two students who did not meet both ELA and Math). OCR is concerned that the School is not adequately monitoring RFEP students who are not demonstrating continued progress, as seen through SBAC.

Prior to the conclusion of the investigation, the District expressed interest in resolving OCR's compliance concerns through a voluntary resolution, and OCR determined such a resolution was appropriate to resolve the concerns regarding monitoring and interventions.

Issue 2: Whether classroom teachers at the School fail to provide LEP parents with important information in their primary or home language about classroom activities, when such information is provided to English-speaking parents.

Legal Standards

As described above, 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. School districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and 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 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.

Factual Findings

XXXXXXXXXXXX provided OCR with letter dated June X, 2019 and signed by the Principal to the parent/guardian of an EL student regarding an overdue library book and associated fines. The Principal told OCR that she did not recall this letter, and typically the library clerk is responsible for late or missing library books. Though she could not speak to this specific library letter, the

Principal told OCR that all communications from the school, for instance attendance notices and disciplinary letters, are sent home in Spanish.

The Master Plan emphasizes the importance of promoting parental involvement, including through effective two-way communication. The Master Plan requires that when 15% or more of a school's population are speakers of the same language, the school will provide written translations of all school information in that language. Additionally, interpretation services will be available for parent-teacher conferences, school meetings, SST, IEP, and retention meetings, suspension and expulsion hearings, and for all due process actions at the District level.

According to the School's narrative response, all communication from the School is conducted in English and Spanish. For instance, the Parent/Guardian and Student Rights and Information Notifications for the 2018-2019 School Year was printed in English and Spanish, and on the District's website, the information about the Uniform Complaint Procedure is written in English and Spanish.

Information conveyed to parents online can be translated through the online platform. According to the School's narrative response, the District's and School's websites can translate information on events into Spanish with a click of a button. Some teachers at the School communicate with parents using ClassDojo, an online platform, which also features an automatic translation option so that parents can access the teachers' communication in Spanish. The District sent OCR screen shots of the ClassDojo platform, and under the teacher's post reads "Translation viewed by 1 parent." According to the District, this indicates that a parent has viewed the teacher's message after it was translated by the ClassDojo platform. The District also provided OCR with a screenshot of the messaging portal in ClassDojo, which also includes a "See translation" button for teachers to translate messages from parents who write in a language other than English. According to another District screenshot of the message portal in ClassDojo, messages to and from parents can be translated into over 35 languages.

The School told OCR that all written information from the District and School to parents is written in English and Spanish. For instance, some teachers send home weekly or monthly newsletters, which are translated into Spanish. Additionally, all invitations to school celebrations and events are presented to families in English and Spanish, and the monthly celebrations have excellent parent participation. The Principal told OCR that the translations are either completed by office staff or by a grade level teacher who translates the document for all the teachers in the grade.

The District provided OCR with documents sent home, including a pajama party on the last day of school, a BBQ picnic for 6th graders after the promotion ceremony, yearbook order form, and homework for the 100th day of school. Each document was written in Spanish and English.

In addition to translated written communication, verbal communication is also conducted in Spanish. The School's office staff is bilingual in Spanish, as are both the Principal and AP/EL Coordinator, and they frequently interpret for monolingual English-speaking teachers. The bilingual staff translate notes, make phone calls, and interpret at meetings and conferences as requested by parents and teachers. The Principal explained there is an informal process in which teachers ask the office staff for assistance. Additionally, at parent-teacher conferences, there are extra interpreters and translation services available. Parents are also able to request language services on the English and Spanish notice to them about the meetings. All District and School parent meetings are conducted in both English and Spanish, such as DELAC/ELAC, School Site Council, and Parent Teacher Organization meetings. According to the Principal, there have not been any complaints to the School or District about English only communications with LEP parents.

OCR spoke to teachers in grades 1 through 6 about their communication with parents. They described the various ways they translate written information so that parents can access it, including messaging systems that have built-in translation (such as Class Dojo and Talking Points), use of Google translate, and/or translation assistance from Spanish-speaking staff. The teachers who use Google translate often ask Spanish-speaking staff to double the Spanish text generated by Google translate. In two grade levels, OCR found that Spanish-speaking teachers help their grade level team by translating all the written materials sent home to students in that grade. For verbal communication, non-Spanish speaking teachers requested interpreters, typically a bilingual administrator. Overall, the teachers did not express any concerns about translation or interpretation services at the School.

Analysis

There is insufficient evidence that the School fails to provide LEP parents with important information in their primary or home language about classroom activities when such information is provided to English-speaking parents. The Principal and the 1st through 6th grade teachers OCR spoke with all stated that written and oral communication occurred in Spanish. The staff were able to describe how they provide Spanish translation and interpretation, including through technology and reliance on Spanish-speaking teachers and office staff. OCR found written documentation that supported the Principal's and teachers' testimony. Specifically, OCR reviewed the School's letters to parents, including notice about a pajama party, BBQ picnic, yearbook order, and the 100th day of school, which were written in English and Spanish. Additionally, OCR reviewed a screenshot showing how ClassDojo allows teachers to translate messages to and from parents so that information is shared using the parents' primary language.

Though the Principal could not explain the June X, 2019 letter to the parent/guardian of an EL student regarding an overdue library book and associated fines, OCR finds credible the School's general practice of translating and interpreting information for Spanish-speaking parents. Aside from the June X, 2019 letter itself, there is no evidence that this one library book letter is indicative of the School's communication with parents. Instead, the preponderance of the evidence shows that the School is meeting the requirement for meaningful communication with LEP parents in a language they understand, and there are processes at the School to provide such communication.

OCR finds, in accordance with Section 303(a) of the Case Processing Manual, insufficient evidence that the District violated Title VI with regard to this issue.

Conclusion

This concludes the investigation of this complaint.

To address Issue 1, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement), which is aligned with the allegation and the findings and information obtained by OCR during its investigation. Pursuant to the Agreement, the District will revise its Master Plan to describe EL-specific interventions, including interventions for LTELs and potential LTELs in upper elementary grades, and additional details about the Catch-Up Plan. The District will also provide training to School teachers and administrative staff on monitoring and interventions for EL and RFEP students. Lastly, the District will provide the School with a list of potential LTELs, LTELs, and RFEPs, and will also develop Catch-Up Plans for potential LTELs, LTELs, and RFEPs who are not making sufficient progress.

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 Issue 1. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

The Complainant has a right to appeal OCR's determination of Issue 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the

District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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