



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

December 5, 2014

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Ms. Maryalice Russell
Superintendent
McMinnville School District 40
1500 NE Baker Street
McMinnville, Oregon 97128-3004

Re: McMinnville School District 40
OCR Reference No. 10141063

Dear Superintendent Russell:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against McMinnville School District 40. As explained below, prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegations.

The complaint alleged that the district discriminated against English Language Learner (ELL) students, on the basis of national origin, by failing to provide ELL students with equal educational opportunity. Specifically, the complaint alleged:

1. the district failed to use a program recognized as sound by some experts in the field, or at least, deemed a legitimate experimental strategy;
2. the district failed to provide an adequate level of qualified, trained staff necessary to implement its chosen ELL program;
3. the district failed to provide adequate support services and monitoring to students who have exited the ELL program;
4. the district failed to provide ELL students, who participate in McMinnville High School's computer-based credit retrieval program, access to English Language Development (ELD) instruction from qualified, trained staff;
5. the district failed to carry out its chosen ELL program at McMinnville High School in the least segregated manner possible;

6. the district failed to provide an adequate opportunity for ELL students at McMinnville High School to participate in specialized programs and extracurricular activities;
7. the district failed to ensure that ELL students are not identified for special education based on their English-language skills; and
8. the district failed to implement ELL services for special education students.

OCR accepted this complaint for resolution under the authority of title VI of the Civil Rights Act of 1964 and its implementing regulation. This statute prohibits discrimination on the bases of race, color, and national origin in programs and activities that receive federal financial assistance from the U.S. Department of Education. The district is a recipient of federal financial assistance from this Department.

The regulation implementing Title VI at 34 C.F.R. § 100.3(a) and (b)(i)-(ii) provides 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, 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 issued a memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin,” 35 Fed. Reg. 11595 (May 1970 memorandum). The memorandum clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to limited-English-proficient (LEP) national-origin minority students. It states that school districts must take affirmative steps to address the language needs of ELL students.

OCR’s December 3, 1985 policy memorandum, “The Office for Civil Rights’ Title VI Language Minority Compliance Procedures” (December 1985 memorandum) clarifies OCR’s standard for determining compliance with the May 1970 memorandum. On September 27, 1991, OCR issued a policy memorandum entitled “Policy Update on Schools’ Obligations Toward National Origin Minority Students with Limited-English Proficiency” (September 1991 memorandum), which outlines the standards and procedures used to evaluate school districts for compliance with Title VI, including requiring districts to have procedures in place for identifying ELL students. The memorandum provides additional guidance for applying the May 1970 memorandum in the context of staffing, transition and/or exit criteria, and program evaluation.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and must be consistent with applicable regulations. In this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

The actions the district will take under the agreement include the following:

1. Review and revision, as necessary, of their existing alternative language program to ensure compliance with Title VI and its implementing regulations.
2. Ensure that there are a sufficient number of certified, trained English-as-a-Second-Language teachers to implement its alternative language program.
3. Ensure that all of its staff providing its alternative language program to ELL students are appropriately certified and trained.
4. Ensure that exited ELL students are participating meaningfully in the district's program.
5. Identify whether any students who have exited the alternative language program during the 2012-2013 and 2013-2014 school years have suffered any academic deficiencies.
6. Measure the effectiveness of its alternative language program.
7. Review the alternative language program at McMinnville High School, including whether the program is carried out in the least segregated manner possible.
8. Ensure that ELL students with or suspected of having disabilities are appropriately evaluated, placed, and provided with special education or related aids and services, and are provided with alternative language services.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by December 30, 2014.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Emily Hazen, equal opportunity specialist, by telephone at (206) 607-1615 or by e-mail at emily.hazen@ed.gov.

Sincerely,

/ S /

Kelli Lydon Medak
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Rob Saxton, Deputy Superintendent of Public Instruction
XXXXXXXXXX, Attorney