



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

April 23, 2015

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Dr. Jeff Rose
Superintendent
Beaverton School District 48J
16550 SW Merlo Road
Beaverton, Oregon 97006-9008

Re: Beaverton School District 48J
OCR Reference No. 10141408

Dear Superintendent Rose:

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 the Beaverton School District 48J (the district). As explained below, prior to the completion of OCR's investigation, the district signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegations.

The complaint alleged that: (1) the district is discriminating against English Language Learner (ELL) students, on the basis of national origin, by failing to provide adequate resources to implement its English-language development (ELD) program effectively; and (2) the district is discriminating against ELL students and their parents, on the basis of national origin, by failing to provide them with adequate translation and interpretation services.

OCR accepted this complaint for resolution under the authority of title VI of the Civil Rights Act of 1964, and its implementing regulation. Title VI prohibits recipients of federal financial assistance from discriminating on the bases of race, color, and national origin. 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 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. 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. To meet Title VI standards in serving ELL students, a school district must: (1) select a sound educational theory for its programs for ELL students that is likely to meet their educational needs effectively; (2) use practices, resources, and personnel reasonably calculated to implement its educational theory; and (3) demonstrate that its program is successful in teaching ELL students English and providing them with access to the curriculum, or must modify the program as necessary. See *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981).

OCR’s January 7, 2015, Dear Colleague letter provides further guidance regarding resources and staffing/resources and parent communication. This letter states that the programs and practices used by a district must be reasonably calculated to implement effectively the educational theory adopted by the school. Specifically, the district has an obligation to provide the staff necessary to implement their chosen program properly within a reasonable period of time. When formal qualifications have been established, and when the district generally requires its teachers in other subjects to meet formal requirements, the district must either hire formally qualified teachers for LEP students or require that teachers already on staff work toward attaining those formal qualifications. In addition, the bilingual aides should be working under the direct supervision of certificated classroom teachers. Students should not be getting instruction from aides rather than teachers. To ensure that LEP students have access to the district’s programs while teachers are completing their formal training, the district must ensure that those teachers receive sufficient interim training to enable them to function adequately in the classroom, as well as any assistance from bilingual aides that may be necessary to carry out the district’s interim program.

In addition, OCR guidance states that the district has an obligation to ensure “meaningful access” to its programs and activities to LEP parents. Specifically, under Title VI, the district has an obligation to “adequately notify” national-origin-minority group parents of school programs and activities that are called to the attention of other parents. The terms “adequately notify” and “meaningful access” mean that parents who are LEP-based on their ability to read, speak, write, or understand spoken English are not to be excluded from, or denied the benefits of, the district’s programs and activities.

After the complaint was opened, OCR also received preliminary information provided by the district concerning its ELL program. For the 2013-2014 school year, the district reported that 12.8% of all students enrolled in the district were being served in the district’s ELL program. The district has 30 elementary schools, 8 middle schools, 6 high schools, 1 immersion school, and 8 specialty schools, such as charter school and science and technology school.

With respect to staffing of its ELL program, the information showed that the district’s ESL/Migrant/Native American Education Department has 5 certified staff, 8 support staff, 11 bilingual facilitators, and 15 community liaisons (ESL staff located at schools who report directly to schools). Each school has a specific alternative language program model, which varies from school to school. The methodologies used include an English-language development (ELD) block, sheltered instruction, two-way immersion, content-based ELD, and pull-out and push-in instruction.

The district's ELL plan was updated May 22, 2014. The plan describes the pedagogy approach for ELL education and the instructional program under each approach. Under staffing/resources, the plan states that they employ 140 teachers with ESOL certification, 1900 classroom and content teachers, 102 special education teacher/resource teachers, 136 specialists and 52 library assistants. The plan includes a description of the district's contingency plan for use of temporary staff, and the district's plan for on-going review of district materials. The plan states that the district will follow the state guidelines for program and curriculum review.

With respect to LEP parent communication, the district's home language survey is an integrated part of every student's enrollment forms, and the student enrollment form is translated into the seven most used languages. The district's ELL plan states that LEP parents who need language assistance programs are identified when they indicate they do not speak English on the Student Enrollment Form. For oral interpretation services for educational conferences the district communicates with parents who indicate on the Student Enrollment Form that they do not speak English, and then if necessary, the district's Welcome Center assigns interpreters from the district staff or an outside agency. For translation of district-wide, school, and student-related documents such as disciplinary documents and transcripts, a Translation Request Form is submitted to the district's Welcome Center, the request is sent to the ESL director for approval and then the request is sent to a district Bilingual Facilitator or an outside agency for translation.

The district's ELL plan states that the district's methods for notifying LEP parents of available programs and services and school-related activities such as progress reports, parent-teacher conferences, handbooks, fund-raising, extracurricular activities, include: providing vital information on the district's web page that can then be translated into students' home language, providing interpreters at school events, sending parents information on the district's Options Programs that is translated into students' home language, providing notification letters to parents that are translated into students' home language, and providing contact information for language assistance for seven major languages in all school newsletters.

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 agreement requires the district to review and revise its policies and procedures regarding the provision of ELL staffing, resources and parent communication. The agreement also requires the district to complete an evaluation of the staffing and resources that are provided to implement the district's ELL program to ensure that adequate staff and materials are provided that are consistent with the district's ELL program of service. The provisions of the agreement include:

1. a review of the number and categories of instructional staff implementing the district's language development program;

2. a description of the methods and criteria the district uses to determine qualifications of instructional staff;
3. a description of the methods and criteria the district will use to determine whether they have sufficient staff and instructional resources to implement their program (e.g., survey staff who provide such services);
4. a review of the instructional materials and resources that are available for the district's language development program;
5. a description of the district's plan for regular and on-going review of district materials;
6. a contingency plan when the district does not currently have all the resources necessary to implement their program; and
7. a description of the methods and criteria that the district will use to determine whether parents of ELL students are being provided with adequate translation and interpretation services (e.g., what are the qualifications of interpreters/translators; how are translation services requested; survey staff to determine whether any problems are occurring in parent communication).

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. We look forward to receiving the district's first monitoring report by September 30, 2015.

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 Jennifer Kuenzli, Equal Opportunity Specialist, by telephone at (206) 607-1675, or by e-mail at jennifer.kuenzli@ed.gov.

Sincerely,

Paul Goodwin
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Honorable Rob Saxton, Deputy Superintendent of Public Instruction