



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

XXXX

Dr. Andrew Houlihan  
Superintendent  
Union County Public Schools  
400 N. Church Street  
Monroe, NC 28112

Re: OCR Compliance Review No. 11-14-5002  
Letter of Findings

Dear Dr. Houlihan:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR). The compliance review examined whether Union County Public Schools (the District) is providing equal educational opportunity to national-origin minority students who are English learners (EL). The review also assessed whether the District's communications with limited English proficient (LEP) parents provide them with meaningful access to information the District provides to parents.

OCR initiated this compliance review under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving financial assistance from the Department. The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to conduct this compliance review under Title VI. OCR appreciates the District's full cooperation from the outset of this review, its proactive efforts to date, and its commitment to address the findings of the investigation.

OCR's investigation found the District in violation of Title VI with regard to its communication with LEP parents/guardians. In addition, during the course of the investigation, OCR noted concerns regarding the District's implementation of its alternative language program; exiting and monitoring of EL students from its alternative language program; evaluation of its EL program; exclusion of EL students from certain specialized programs; evaluation and placement of EL students with disabilities; and staffing of its EL programs. The District expressed its interest in resolving the concerns without further investigation. Accordingly, on October 5, 2016, the District voluntarily entered into a resolution agreement that commits the District to take specific steps to address the identified violations and areas of concern.

## **Background**

During the course of OCR’s investigation, OCR reviewed documents provided by the District, including: (1) District policies and procedures regarding the provision of educational services to English learner (EL) students; (2) a description of the District’s alternative language program; (3) a list of District personnel providing EL services and their qualifications; (4) a list of students identified as having a primary home language other than English (PHLOTE) and/or related documentation and forms; (5) the District’s EL curriculum and sample materials; (6) documentation concerning students who exited the District’s EL program; (7) the District’s evaluations of its EL program; (8) documentation regarding the District’s gifted and talented program and lists of students identified as gifted and talented; and (9) policies, procedures, and related documentation regarding the District’s identification of LEP parents and the provision of interpretation and translation services. In addition to its document review, OCR conducted a site visit during which it visited three District schools and the ESL Academic Support Center (ESL Center), and interviewed District-level ESL staff, school-level English as a Second Language (ESL) teachers, general education teachers, principals, and assistant principals. OCR also conducted student focus group interviews at XXXX Elementary School, XXXX Middle School, and XXXX High School. The student focus groups were comprised of a mix of EL and non-EL students, across all grade levels.

OCR’s investigation examined evidence related to the following issues: identification and assessment of EL students; alternative language program design and implementation; EL student placement and participation in the alternative language program; instructional materials; staffing and staff development; exiting criteria and monitoring; program evaluation; parental communication; EL student access to specialized programs; special education services; and unnecessary segregation.

The District is composed of 30 elementary schools, 9 middle schools, 11 high schools, and 3 specialty schools. During the 2014-2015 school year, the District enrolled 41,379 students in its 53 schools. The racial/ethnic composition of the students enrolled in the District was as follows:

<b>Student Enrollment by Race/Ethnicity 2014-2015 School Year<sup>1</sup></b>							
<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native American</b>	<b>Pacific Islander</b>	<b>Two or More Races</b>	<b>TOTAL</b>
27273	5359	6494	1065	108	21	1059	41379
65.9%	13.0%	15.7%	2.6%	0.3%	0.1%	2.6%	100%

The District’s EL student population has grown significantly since the early 2000s. In 2000, the District reported 645 EL students, making up 2.9% of the overall student population. According to OCR’s 2013-2014 CRDC data<sup>2</sup>, there were 2,346 EL students in the District during the 2013-2014 school year, comprising 5.6% of the overall student population. In other words, there were approximately 3.5 times more EL students in the District than in the year 2000, and the percentage of students in the District who are EL students has nearly doubled.

<sup>1</sup> Source: <http://www.ncpublicschools.org/fbs/accounting/data/>

<sup>2</sup> Available at [ocrdata.ed.gov](http://ocrdata.ed.gov).

In 2013-2014, the majority (87.9%) of EL students in the District identified as Hispanic. The District has indicated to OCR that the predominant language group is Spanish.

### **Legal Standards**

Title VI and its implementing regulation prohibit discrimination on the basis of race, color, or national origin by recipients, including the District, of Federal financial assistance from the Department. The Title VI implementing regulation 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 that 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. 11,595 (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 (now commonly referred to and referred to throughout this letter as EL students). It provides that school districts must take affirmative steps to address the language needs of EL students. To meet Title VI standards in serving EL students, a district must: (1) select a sound educational theory for its programs for EL 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 EL students English and providing them with access to the curriculum or it has taken steps modify the program as necessary. *See Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). The May 1970 memorandum also provides 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.

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 EL 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.

Executive Order 13166, Improving Access for Persons with Limited English Proficiency, reprinted at 65 Fed. Reg. 50121 (August 16, 2000), requires that recipients of Federal financial

assistance “take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.” OCR applies this principle in its overall approach to investigations pertaining to the adequacy of notice provided by school districts to LEP parents and guardians.<sup>3</sup>

## **Analysis**

### **A. Identification and Assessment**

Districts must take affirmative steps to address national-origin minority students’ language barriers that prevent EL students from effective participation in the district’s educational program. A district must have procedures in place to accurately and timely identify and assess students with a primary or home language other than English (PHLOTE) and determine whether they are EL students through a valid and reliable English language proficiency (ELP) assessment. Generally, these procedures must include an assessment of whether national-origin minority students proficiently speak, understand, read, and write English.

#### **Identification:**

The District’s written policy and procedures for identifying PHLOTE students are set forth in the North Carolina Procedures for the Identification of Limited English Proficient Students.<sup>4</sup> The District asks that all parent/guardians registering a student complete a Home Language Survey (HLS) at the time of registration. The State provides a sample HLS with suggestions as to the type of questions to be included in the HLS, such as: “1. What is the first language the student learned to speak? 2. What language does the student speak most often? 3. What language is spoken most often in the home?” State guidelines recommend that if no answer is a language other than English, the student is not a language-minority student.

The District’s HLS asks the parent/guardian to respond first to the threshold question of whether the first-learned or home language is any language other than English. If the answer is “no,” the parent/guardian is directed to stop at this question. If the answer is “yes,” the respondent is directed to answer the following questions: “What is the first language the student learned to speak? What language does the student speak most often? What language is most often spoken at home?” The District’s translation of the HLS into Spanish, while following the same approach and asking the same follow-up questions, contains a slightly varied threshold question inquiring only as to whether the student first learned any language other than English and directing the parent/guardian to continue on if the answer is “yes.”

The State’s guidelines direct schools to investigate the student’s home language any time one of the responses to the HLS questions is a language other than English. The guidelines provide that the investigation should consist of “probing questions” from an LEP coordinator to the student or parent/guardian regarding the language spoken to a child during development and the use of the

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<sup>3</sup> See also the U.S. Department of Justice policy guidance, “Enforcement of Title VI of the Civil Rights Act of 1964—national Origin Discrimination Against Persons with Limited English Proficiency” (June 18, 2002) and the U.S. Department of Justice and OCR Dear Colleague Letter, “English Learner Students and Limited English Proficient Parents” (January 7, 2015).

<sup>4</sup> Available at [https://www.wida.us/membership/states/nc/LEP\\_ID\\_Guidance\\_May2011.pdf](https://www.wida.us/membership/states/nc/LEP_ID_Guidance_May2011.pdf).

non-English language in the home. The State lists the following sample probing questions: “1. When the child was young and language was developing, what language(s) was/were spoken to the child? 2. How is the language (other than English) used in the home? 3. Are there other student issues (*e.g.*, significant health issues, academic gaps, grade retentions, special services, etc.)?” If the investigation reveals that the student’s dominant language is English, the student is not considered a language-minority student. On the other hand, if the investigation confirms that the student’s dominant home language is not English, the student is scheduled for administration of the District’s screening assessment, the WIDA Access Placement Test (W-APT). Irrespective of the investigation findings, District staff must file the completed HLS in the student’s cumulative folder to comply with the guidelines.

The District generally identifies EL students through a three-step process. The process typically begins at the student’s home school with administration of the home language survey during registration, continues with an investigation to confirm the student’s dominant language, and ends with an assessment of English language proficiency. At any of the three steps, if the District concludes the student’s dominant language is English, the inquiry stops. The District’s ESL Center, which offers EL resources to families and teachers and handles registration and assessment, carries out at least the latter two steps (and may also assist parent/guardians in completing the HLS and other registration materials).

According to the District’s procedures, when a parent/guardian indicates on the survey that the primary home language is any language other than English, the parent/guardian or school must contact the ESL Center to schedule an appointment for investigation and assessment.<sup>5</sup> An email and attached memorandum sent to school personnel responsible for enrolling students on May 17, 2012 reminded staff that a parent/guardian or school staff must call the ESL Center if the parent/guardian indicates a language other than English on the home language survey. Along with confirming this requirement to notify the ESL Center, the District’s ESL Case Manager and the principal at XXXX High School added that, in practice, school personnel will most often contact the ESL Center on behalf of the parent/guardian to schedule an appointment, instead of leaving it to the parent to call the ESL Center.

Once the parent/guardian or school contacts the ESL Center, staff at the ESL Center will typically schedule an appointment to meet with the parent/guardian within a week of the call. When the parent/guardian visits the ESL Center, the ESL Case Manager will conduct an investigation, consistent with the State guidelines, to determine whether the student’s language is, in fact, a language other than English, thereby confirming the need for an English language proficiency assessment. In addition, teachers also have the ability to refer students to the ESL Center for language proficiency testing if they notice a student is struggling with English in the classroom.

If the ESL Case Manager determines that the student is not a language-minority student based on his investigation, the ESL Center will not conduct an assessment. If the ESL Case Manager confirms through his investigation that the student is a language-minority student, the ESL Case Manager or the ESL Parent Liaison will assess the student through the administration of the W-

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<sup>5</sup> If the parent/guardian does not indicate any language other than English, intake personnel file the HLS in the student’s cumulative folder.

APT, which tests all PHLOTE students (with the exception of first semester kindergartners) in the four language domains (listening, speaking, reading, writing). According to the ESL Case Manager, the ESL Center assesses students and notifies their parents/guardians of any available EL services within the first thirty days of school.

The District's policies provide two exceptions to the practice of referring families to the ESL Center for investigation of a student's PLHOTE status: (1) new kindergartners, who, for the first 30 days that they are enrolled, are tested at their home school by an ESL teacher instead of visiting the ESL Center and (2) transfer students from within the District who will instead have a copy of their HLS or a note placed in the ESL teacher's box so that the student will receive EL services when school starts based on identification and assessment at their former school.

OCR has concerns that the investigation process outlined in the procedures leaves considerable discretion with regard to the questions to be asked as part of the investigations and what information would be sufficient to consider a student's dominant home language to be English despite a response other than English to an HLS question. Further, OCR is concerned about the burden placed on parents/guardians to initiate contact with the ESL center in order for the determination of language proficiency to occur.

Assessment:

The District's standards as to eligibility for the alternative language program vary by grade level and semester. For the first semester of kindergarten a student is eligible if they score less than the target score in the listening and speaking combined. In the second semester of kindergarten and first semester of first grade, a student is eligible if they score below a target score in listening and speaking combined or below the target scores in reading or writing. Starting with the second semester of first grade until grade twelve, a student is eligible for EL services if they have a composite score less than 5.0 or a score below 5.0 in any of the four domains. The District also provided guidelines for determining the types of EL services to be offered to students based on their score on the W-APT.

Once the assessment is completed and a student has been identified as eligible for an alternative language program, the ESL Parent Liaison sends the student's information to the ESL teacher at the student's school so that the student can be added to the ESL roster and begin receiving services through the ALP as soon as possible. OCR's review of student files did not reveal any concern that the District fails to notify parents of available services within thirty days or to implement those services in a timely manner.

OCR considered whether the District's W-APT administrators, the ESL Case Manager, and ESL Parent Liaison, are qualified administrators based on W-APT requirements and the District's stated practices. For administration of the W-APT, WIDA recommends full training for the ACCESS but considers review of the test administration manual(s) and scored student writing samples sufficient for reliably administering and scoring the W-APT. To be qualified for administration of the ACCESS, a test administrator must meet the following qualifications: employed by the school system; status as a classified or certified school staff member; status as highly proficient in English; and trained on the administration of the state-designated English

language proficiency test. The ESL Case Manager confirmed these requirements. As far as trainings on administration, the ESL Case Manager explained that he attends trainings, in person and online, held by the State for updates on W-APT and ACCESS administration guidelines. The ESL Case Manager added that he provides training to staff on the administration of these two assessments

OCR did not make a compliance determination under Title VI as to whether the District's current policies and procedures are adequate to identify all PHLOTE students. However, as discussed below, OCR found the District in violation of Title VI for failing to ensure meaningful communication with LEP parents/guardians in a language they can understand. The failure to provide consistent interpretation and translation services extends to the enrollment process and can impact the amount and accuracy of the information obtained from parents/guardians that is necessary to properly identify and assess students for PHLOTE status.

## **B. Program Design and Delivery**

Language assistance services or programs for EL students must be educationally sound in theory and effective in practice. However, Title VI does not require any particular program or method of instruction for EL students.

Students in EL programs must receive appropriate language assistance services until they are proficient in English and can participate meaningfully in the district's educational programs without language assistance services. EL programs must be designed and reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time. The September 1991 Memorandum advises districts that they retain an affirmative obligation to remedy "academic deficits" sustained by language-minority students in programs that temporarily emphasize English language acquisition over other subjects.

The September 1991 memorandum, based on *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), provides standards by which to determine whether a district's program for LEP students complies with Title VI. According to *Castañeda*, a district must not only adopt an alternative language program that is likely to meet the educational needs of language-minority students effectively, it must also make *bona fide* efforts to make the program work.

### **1. Adequacy of the District's Alternative Language Program**

In evaluating whether the District's alternative language program is likely to meet the educational needs of language-minority students effectively, OCR first determines whether the school district has chosen a model for providing educational services to EL students that is recognized by some experts in the field as based upon a sound educational approach or upon a legitimate experimental strategy.

The District's ESL handbook describes the services provided by the District to EL students. According to the handbook, the District provides content-based English as a Second Language (ESL) and Sheltered Instruction Observation Protocol (SIOP) Model services to its EL students.

ESL instruction emphasizes the direct teaching of language in the academic context. EL students are pulled out from their regular classroom to receive ESL instruction. The District indicated that the curriculum objectives are based on the WIDA Standards and ESL teachers collaborate with content area teachers to develop lessons that integrate WIDA Standards with content area standards in order for ESL lessons to cover both content and language objectives. ESL teachers instruct students in English, with very little use of students' native languages.

The SIOP model is a framework that organizes instruction in a manner that makes it comprehensible to students at their level of English proficiency. The model relies upon eight interrelated components to deliver lessons that aim to address the academic and linguistic needs of students: lesson preparation; building background; comprehensible input; strategies; interaction; practice and application; lesson delivery; and review and assessment. The District asserts that SIOP is incorporated into all ESL lessons and used in regular classrooms at certain District schools. The District's program description further provides that, at all District schools, ESL teachers regularly attend grade level meetings and engage in collaborative planning with general education teachers to ensure that lessons reflect the academic content and integration of the WIDA standards.

According to the ESL handbook, EL students receive varying amounts of services based on their grade level and proficiency categorization. EL students are categorized into the following four categories of service provision: "Kindergarten Targeted Instruction, Category 1 (Novice Services), Category 2 (Intermediate Services), or Category 3 (Transitional Services)." Categories one to three apply to all students from grades one to twelve, while kindergarten targeted instruction services are available only to kindergarten students. To receive kindergarten targeted instruction, a student must meet two of the following criteria: W-APT score below 26; ACCESS overall accountability level between 1 and 5.9; and struggles with classroom performance. A student will receive novice (Category 1) services if the student is currently identified as an EL student and meets two of the following criteria: ACCESS overall proficiency/accountability level between one and two; less than two years in school; struggles with classroom performance; or below proficient on standardized assessments. An EL student will receive intermediate (Category 2) services if the student has been identified as an EL student and meets two of the following criteria: scores between 2.1 and 3.9 in ACCESS overall proficiency, has been in school for more than two years, struggles with classroom performance, or falls below proficient on standardized assessments. Lastly, a student already identified as an EL student may receive transitional (Category 3) services if they meet one or more of the following criteria: ACCESS overall proficiency between 4.0 and 5.9; more than two years in school; struggles with classroom performance; or below proficient on state standardized assessments.

While the three categories of services other than kindergarten targeted instruction apply to all students from grades one to twelve, the amount and nature of services received within categories one and two vary by grade level. For targeted kindergarten instruction, the District takes a collaborative planning approach, in which the ESL teacher and ESL Program Specialist provide input on how to integrate the WIDA standards into lessons and an ESL specialist may provide curricular support. For novice (Category 1) services, first- through eighth-grade students receive three thirty-minute sessions per week and students in schools utilizing the SIOP model receive



differentiated instruction in content area classes and ninth- through twelfth-grade students receive three thirty-minute sessions per week and, in certain schools, an ESL offering for academic credit of a ninety-minute block five days a week. Students in the intermediate (Category 2) services receive the following services by grade levels: students in first through eighth grade receive two sessions of forty-five minutes per week and SIOP instruction in content area classes at certain schools and students in grades nine through twelve receive two weekly sessions of forty-five minutes and, in certain schools, an ESL offering for academic credit of a ninety-minute block five days a week. EL students at the novice and intermediate service levels also receive, through collaboration between classroom and content area teachers and ESL teachers and staff, accommodations, modifications, and language assistance strategies for EL students in core content classes. Lastly, all students in grades one through twelve receive the same transitional (Category 3) services: collaboration between the ESL teacher, classroom teacher, and counselor to determine accommodations, modifications, and appropriate instructional categories and available consultation with the ESL teacher on linking WIDA standards to content area instruction.

Based upon the information obtained and reviewed by OCR, the District's chosen instructional model for providing English language instruction—English as a Second Language (ESL)—is a model recognized as sound by experts in the field.

## **2. Adequacy of the Implementation of the Alternative Language Program**

To comply with the second prong of the *Castañeda* standard, a district must follow through with the practices, resources, and personnel that are reasonably calculated to transform the theory of the program design into the reality of the educational setting. In its analysis, OCR considers whether the program has been implemented as intended, whether participation is available to all identified students, whether staffing needs are satisfied, whether instructional materials are adequate, and whether objective criteria have been established for exiting LEP students from the program.

### **Participation**

As discussed in above, the EL services offered through the District's alternative language program generally take three forms: sessions of ESL instruction equivalent to ninety minutes per week, SIOP strategies infused into regular classroom instruction, and collaboration between ESL teachers and core curriculum teachers to ensure EL students are receiving necessary language assistance services in content area classes.

State guidelines provide that, if a student is identified as an EL student, ESL staff must document the student's identification as EL and appropriate instructional program goals in limited English proficient (LEP) plans or documentation. The State further requires that the LEP plan or documentation "indicate appropriate instructional and testing accommodations for which the student is eligible." As prescribed by the guidelines, the District documents the collaboration between ESL and content area teachers in LEP plans, which identify the specific needs of each EL student for classroom teachers. The ESL Case Manager and an ESL teacher confirmed to

OCR that the District requires all students to have LEP plans that outline the type of services and assistance that are required in order to have meaningful access to the curriculum.

While witnesses corroborated the policy to utilize LEP plans as the instrument to ensure EL students receive language assistance services in content area classes, OCR's review of student files revealed inconsistent implementation of the plans. Of the eighty-four student files reviewed by OCR, only eighteen files contained LEP plans. OCR noted that these students with LEP plans were not enrolled in a particular school, instead they were spread out among all District schools;<sup>6</sup> meaning that there does not appear to be a consistent application of providing students within or across schools with LEP plans. An ESL Teacher confirmed this inconsistent application when she told OCR that a few students "fell through the cracks" and were not provided with LEP plans. This same teacher mentioned that the District recently revised the procedure for providing the LEP plans to classroom and content area teachers because some teachers claimed not to have received the LEP plans from the ESL teacher. Because District policy and ESL staff identify LEP plans as the method for ensuring EL students receive language assistance services in core content classes, OCR is concerned that the inconsistent implementation of LEP plans reflects a failure to provide language assistance services to EL students in core content classes.

In addition to the inconsistent inclusion of LEP plans, OCR found that the student files often failed to include documentation of an EL student's category of services (*e.g.*, targeted kindergarten, novice, intermediate, or transitional services). Although OCR found that some files evidenced the provision of EL services, the lack of documentation identifying the student's service category prevented OCR from assessing whether the student had been placed in the appropriate service category based on the District's policy and whether any services documented in the files met the service requirement for the student's category (*e.g.*, the equivalent of three thirty-minute sessions for novice service students).

ESL staff stated to OCR that there was a lack of EL services tracking and general descriptions of the services offered by service level. While asserting that all EL students she serves receive appropriate services, an ESL Teacher noted that she does not track the service provision to each EL student she serves, but that she could "construct" a record based on her schedule. She was able to speak to the general amount of time each level of student is to receive services, but did not provide specific details regarding the type of services that were provided at each level. Another ESL teacher suggested that ESL teachers work with EL students in small groups in the student's regular classrooms as much as possible while pulling out newcomer students for instruction on basic strategies.

For the reasons noted above, OCR has concerns regarding whether the District is implementing its ALP in a manner that ensures the meaningful participation of EL students in the District's program.

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<sup>6</sup> OCR notes that no EL students at XXXX Elementary School or XXXX Elementary School were provided LEP plans.

### *EL Students Opted Out of EL Services*

If parents opt their children out of an EL program or specific EL services, the children retain their status as EL students, and the school district remains obligated to take the “affirmative steps” required by Title VI to provide these EL students access to its educational programs. In instances where parents refuse to enroll their children in an EL program, the school district should inform parents about the purpose and benefits of the EL program in a language they understand; and if a student who has been opted out of EL services is unable to perform at grade level without receiving EL services, the school district should periodically remind the parent that the student remains eligible for such services. School districts must also monitor the academic progress of students whose parents have declined or opted out of the EL program and provide other language support services for such students.

The District’s process for parents/guardians to opt out of EL services for their student involves the signing of an opt-out waiver form after ESL staff members discuss the services available to their student and how those services would benefit their student’s ability to access the curriculum and succeed in school. The ESL Case Manager noted that having a parent opt out is rare. He recalled only two instances over five years, all involving students who were almost fully proficient in English and exited the next year. OCR’s review of files did not find any students who were opted out of the program. The ESL Case Manager indicated that opted-out students remain EL students as far as the District is concerned and are assessed annually with the ACCESS exam. In addition, opted-out students are monitored by ESL staff and general education teachers to ensure that they are making adequate progress and, if they are not, ESL staff will attempt to contact the parent/guardian again to offer EL services that might help to improve the student’s progress. It is unclear whether the District takes any steps beyond ACCESS testing and communicating with parents when monitoring raises concerns to meet the needs of opted-out EL students.

### *Staffing and Staff Development*

School districts have 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 a school district generally requires its teachers in other subjects to meet formal requirements, a district must either hire qualified teachers to provide alternative language services to EL students or require that teachers already on staff work toward attaining those formal qualifications. School districts must ensure that the EL student-teacher ratio is proportional to the student-teacher ratio of English-speaking students and allows teachers to implement the school district’s educational program. *See* OCR’s 1991 Policy Update.

If a district uses a method such as ESL or sheltered instruction, the district should ascertain that teachers who use those methods have been adequately trained in them. This training can take the form of in-service training, formal college coursework, or a combination of the two. A district should be able to show that it has determined that its teachers have mastered the skills necessary to teach effectively in a program for EL students and the teacher’s classroom performance should be evaluated by someone familiar with the method being used. *See* the 1991 Policy Update.

Additionally, teachers must be available in sufficient numbers to ensure effective implementation of the district's chosen English language development program. Alternative language program support staff must also be qualified for the educational support roles that they fulfill in a district's English language development program. Minimally, they must have the English language and native language skills appropriate to their assigned, non-instructional role in the alternative program. Certified or endorsed instructional staff must closely and appropriately supervise the support staff.

The District provided documentation outlining the requisite qualifications for ESL teachers: a current North Carolina teaching license with certification in Teaching English to Speakers of Other Languages.

The District reported to OCR that it employs 22 ESL teachers in what it considers "High LEP population schools."<sup>7</sup> The District also reported employing 13 itinerant ESL teachers, with each one responsible for working with students at anywhere from two to eight schools. Among the 13 itinerant ESL teachers, two were designated as "bilingual instructional assistant," and one as "instructional assistant." The District did not describe how those designations factor into the level of service provision and responsibility assigned to each of these individuals.

The District also employs a full-time ESL Case Manager who serves as an interpreter and lists his credentials as "Bilingual English/Spanish." The District's ESL Academic Support Center also lists an ESL translator and ESL Parent Liaison who act as translators/interpreters and conduct assessments. Both of those individuals list their credentials as "Bilingual English/Spanish." The ESL Academic Support Center also employs two ESL Program Specialists, and a LEP program counselor. The District also provided OCR with a school-by-school list of staff assisting with services for EL students. Many schools listed staff with no ESL-specific credentials among those who provide ESL services to EL students. For example, in the XXXX Elementary school list, the District includes two staff who describe their function as "tutoring struggling learners including at least one ELL," and provides that they are not certified in ESL instruction and do not have a teaching license.

The District's handbook provides in the "Context" section that, "[d]ue to itinerant teachers and low to high incidences, services are allocated according to need and time." This context suggests that quantity of services may be different at schools with high-LEP populations that are served by ESL teachers located at the schools, rather than by itinerant ESL teachers. An ESL teacher at XXXX Elementary School described a system in which he rotates from classroom to classroom throughout the day providing small group instruction to EL students. He mentioned that he generally co-teaches in English and meets with the classroom teacher beforehand to decide what materials will be covered in the small groups. Similarly, the principal at XXXX Elementary School said that the school utilizes a co-teaching model with ESL teachers visiting the same classrooms five days a week. The ESL teacher at XXXX Elementary noted that they have a large number of ESL students (more than 200) divided among three ESL teachers. In addition to that number, he stated that he monitored 20 students who had exited the program. An itinerant

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<sup>7</sup> Ten schools fall in this category, with each receiving a different number of designated ESL teachers. This is presumably due to the size of the EL student population, but OCR would need to conduct further interviews to confirm this.

ESL teacher interviewed by OCR noted that she serves 20-25 students per week across seven schools. She stated that she sees each student 2-3 times a week.

In regard to professional development opportunities, the ESL teachers mentioned attending Sheltered Instruction Observation Protocol (SIOP) trainings, with one ESL teacher specifying that she likely attended the training during the 2011-2012 and 2012-2013 school years. Neither ESL teacher interviewed by OCR identified a more recent SIOP training. One of the ESL teachers did add that teachers may attend workshops organized by the North Carolina Department of Public Instruction. One of the ESL teachers was uncertain on whether teachers at the seven schools she oversees had received SIOP training, suggesting that the extent to which classroom teachers are trained on SIOP may depend on whether their school has been identified as a SIOP school. In addition to SIOP training, an ESL teacher described regular training on how District programs can work for EL students. The District asserted that ESL teachers participate in WIDA ELD Standards training, which is introduced at the beginning of the school year and continued throughout the year during cluster meetings.

OCR has concerns that some ESL teachers are overly burdened either by the number of EL students they must serve, or the number of schools amongst which they must divide their time every week and that, more generally, quantity of services received by EL students is dictated by staffing rather than by proficiency level or student need. Additionally, OCR has identified concerns that several schools may be tasking teachers and aides with providing EL students with ESL services despite the fact that those staff members lack the necessary credentials to do so.

### Materials and Resources

EL students must receive appropriate instructional materials in the EL program, including adequate quantities of English language development materials available at the appropriate English proficiency and grade levels. The adequacy of resources is determined by the timely availability of required equipment and instructional materials. Limited financial resources do not justify failure to provide adequate resources. OCR considers the extent to which a particular remedy would require a district to divert resources from other necessary educational resources and services.

The ESL teachers interviewed by OCR asserted that they had sufficient resources to implement the EL program. One EL teacher identified Oxford picture dictionaries for newcomers and reproducible materials on literacy as the materials employed during EL instruction. The ESL teacher further noted that, since the EL instruction is intended to supplement the content area instruction, the EL materials may be distinct from the type of materials used in general education classrooms. Another ESL teacher pointed to electronic resources available to provide ESL instruction – specifically, this ESL teacher told OCR that large and small promethean boards are available for ESL lessons.

Although the ESL teachers expressed satisfaction with the available resources, the teachers did not identify the availability or use of English language development materials or materials aligned to the District's EL program model, with the exception of the picture dictionaries used with newcomers during sessions. The ESL teachers and District staff, however, did not explain

how the materials are accessed or used and how they align with the District’s implementation of its EL program. OCR is concerned about the potential lack of timely availability of English language development materials.

### **C. Monitoring and Exiting Students from the EL Program**

School districts must monitor the progress of all of their EL students in achieving English language proficiency and acquiring content knowledge. Monitoring ensures that EL students are making appropriate progress with respect to acquiring English and content knowledge while in the EL program or, in the case of former EL students, in the regular educational setting.

With respect to exiting EL students from EL programs, services, and status, a valid and reliable English language proficiency assessment of all four language domains must be used to ensure that all EL students have achieved English proficiency. To demonstrate proficiency on the English language proficiency assessment, EL students must have either separate proficient scores in each language domain (*i.e.*, a conjunctive score) or a composite score of “proficient” derived from scores in all four language domains. Whether a conjunctive or composite “proficient” score is used, the score must meet two criteria. The English language proficiency assessment must meaningfully measure student proficiency in each of the language domains, and, overall, be a valid and reliable measure of student progress and proficiency in English. A composite “proficient” score must be a valid and reliable measure that demonstrates sufficient student performance in all required domains to consider an EL student to have attained proficiency in English. The “proficient” score, whether conjunctive or composite, must be set at a level that enables students to effectively participate in grade-level content instruction in English without EL services.

Depending on individual educational need, EL students may require several years of alternative language program services by qualified staff using models that are recognized as sound, before the students will possess adequate English language proficiency to participate meaningfully in the mainstream academic setting. Under Title VI and its implementing regulation, time limitations and other categorical or subjective criteria may not substitute for objective determinations of a EL student’s ability to speak, read, write, and understand English, prior to reducing or discontinuing recognized alternative language program services. In addition, schools retain an obligation to provide assistance necessary to remedy academic deficits that may have occurred in other subjects while the student was focusing on learning English.

Once exited from the alternative language program, former EL students should be able to participate meaningfully in the mainstream educational environment. That is, they should be able to keep up with their never-EL peers academically and participate meaningfully in essentially all aspects of the curriculum without the use of simplified English materials. In order to implement this requirement, districts should monitor the academic progress of former EL students on an individual basis.

North Carolina guidelines require that EL students take an annual language proficiency assessment until the student meets exit criteria. The District utilizes the state-approved Assessing Comprehension and Communication in English State-to-State for English Language

Learners (ACCESS) exam. The ESL Case Manager confirmed that the District administers an annual ACCESS exam during the spring semester.

The District indicated that the monitoring of EL student progress for EL students who are in the program is conducted by a Limited English Proficiency Team (LEP Team) that is in place at each school. The ESL teacher assigned to the school is part of the LEP Team, as is other relevant staff including general education teachers and special education staff when necessary. The LEP Team reviews student report cards, teacher observations, and scores on End of Grade (EOG) and End of Course (EOC) testing, which assess a student's mastery of academic content in areas such as math, science, and social studies, in addition to scores on the annual English proficiency test, to ensure that students are progressing adequately both in English language acquisition as well as in academic content areas. The LEP Team is responsible for creating/updating LEP Plans which are then shared with all relevant staff to address issues with student progress. The LEP Plans are supposed to be distributed to all teachers who work with EL students, but at least one ESL teacher admitted that this does not always happen. The ESL teachers interviewed by OCR noted that they are in constant communication with general education teachers and other relevant staff in order to ensure that EL students are receiving the necessary support to make adequate progress. OCR's review of student files found that many EL student files did not include LEP Plans for the individual student.

The District also provided OCR with a document outlining multiple criteria for determining whether a student should exit direct EL services: language-proficiency scores based on the ACCESS and W-APT assessments; Developmental Reading Assessment, if applicable; EOG/EOC scores (End of Grade and End of Course scores indicate the final grades obtained by a student at the completion of a particular course as well as the end of a full academic year), if applicable; report cards; feedback from classroom teachers through conferences; and years in U.S. schools. OCR reviewed a "Guidelines for Testing Students Identified as Limited English Proficient" document providing that an EL student must meet the Comprehensive Objective Composite (COC) set by North Carolina that requires an overall composite score of 4.8 or above on the ACCESS exam, with at least a 4.0 on the reading and writing subtests (for kindergarten students, the state language proficiency test for kindergarten is used). District policies require the LEP Team to monitor the progress of exited students and, in the event that an exited student is having difficulties that are attributable to language proficiency, reclassify exited students to bring them back into the ALP if necessary.

According to an ESL teacher at XXXX Elementary School, EL students are exited based on multiple criteria, with language proficiency test scores most heavily weighted. The teacher also mentioned teacher input as a factor considered in exiting the student and modifying services. OCR's review of the student files provided by the District raises concerns regarding the District's monitoring of students both within the ALP and after exiting. In one instance, OCR noted that an exited student's 6<sup>th</sup> and 7<sup>th</sup> grade report cards indicated failing grades in several classes, yet the file did not indicate the implementation of any interventions or changes to the student's educational and/or language services. Another student file indicated that an exited student would remain in the regular education program despite failing several 8<sup>th</sup> grade courses, without providing any information to support the decision.

The EL testing guidelines document identifies the two-year monitoring requirement for students who exit the EL program. The District asserts that ESL teachers compile lists of students to be monitored and request report cards for the monitored students. The ESL teacher keeps a record of the first grading period, first semester, and second semester grades of the monitored EL student. After two years, the ESL teacher copies the record to the student's participation history folder in the student's cumulative file. The ESL Case Manager confirmed that exited EL students are monitored for two years and that ESL teachers at the schools keep track of exited EL students by reviewing their performance on report cards. The District provided a monitoring form soliciting feedback on progress and comments and requiring attachment of end-of-semester report cards for two years. While the ESL Case Manager specified that students who exit the program and struggle can be reassessed and re-enter the ALP, at least one ESL teacher believed that once a student was exited, it was illegal for them to be placed back in the ALP, even if monitoring suggested a need for re-entry.

OCR's review of student files raises concerns about the District's monitoring of students while they are in the ALP as well as the District's decision to exit students and the monitoring of student's once they exit the program. Specifically, OCR has concerns regarding the District's response when a student being monitored appears to be having difficulty accessing the program.

#### **D. Access to Special Programs and Extracurricular Activities**

If a district has a process for identifying gifted and talented non-EL students, it must also identify gifted and talented EL students, and provide equal opportunity for EL students to participate in gifted and talented programs, as well as nonacademic and extracurricular activities. Unless the particular gifted/talented program or program component requires proficiency in English language skills for meaningful participation, the recipient must ensure that evaluation and testing procedures do not screen out EL students because of their limited English proficiency. To the extent feasible, placement tests should not be of a type that the student's limited proficiency in English prevents the student from qualifying for a program for which the student would be otherwise qualified. EL students cannot be categorically excluded from gifted and talented or other specialized programs, such as advanced placement (AP) courses.

The District offers an Academically/Intellectually Gifted (AIG) program to its K-12 students. In grades K-3, students are not formally identified but may be eligible for advanced subject grouping (*e.g.*, a kindergarten student taking first-grade math). The District begins screening students for giftedness at the end of third grade. Through the AIG program, the District offers an AIG class in math and/or reading, while continuing to offer the advanced subject grouping. The AIG program uses Singapore Math as a core curriculum in math for grades four and five and the language arts curriculum utilizes materials from the College of William & Mary Center for Gifted Education and the Great Books Foundation. At the high school level, the District offers honors and advanced placement courses. All District schools offer the gifted program.

The District shares various pieces of information with parents about the program, such as a handbook of parents' rights, a notice of gifted screening, and requirements to qualify under each of the offered pathways. The documents are available in English and Spanish.



The District provided documentation of three pathways by which students may access the gifted program. To qualify under the first pathway, a student must score in the 98<sup>th</sup> percentile of an approved test. For eligibility under the second pathway, the student must meet three of four criteria: aptitude, a score in the 93<sup>rd</sup> percentile on an approved test; content aptitude, a score in the 90<sup>th</sup> percentile in reading or math; achievement, a score in the 85<sup>th</sup> percentile on an approved test in the same subtest areas as the aptitude qualifier or 93<sup>rd</sup> percentile on an approved grade-level test in the same subtest area as the aptitude subtest qualifier; and performance, a grade greater than 93% on their most recent report card or a gifted rating scale in the 90<sup>th</sup> percentile. The third pathway requires students to meet three of the following four requirements: aptitude, a score in the 93<sup>rd</sup> percentile on an approved test or in the 90<sup>th</sup> percentile in a content subtest score; content aptitude, a score in the 85<sup>th</sup> percentile on an approved test in the same subtest areas as the aptitude qualifier or 93<sup>rd</sup> percentile on an approved grade-level test in the same subtest area as the aptitude subtest qualifier; achievement, a grade greater than 93% on their most recent report card or a gifted rating scale in the 90<sup>th</sup> percentile; and performance, a score in the 90<sup>th</sup> percentile in both qualifying areas on the gifted rating scale. This pathway deemphasizes grades by permitting students to meet the achievement criteria by submitting a portfolio of their work, which is scored in place of grades. Additionally, the third pathway accounts for any language acquisition delays by assessing students with the Naglieri Nonverbal Ability Test.

Staff interviewed by OCR did not identify any barriers to participation in the gifted program for EL students. However, OCR reviewed the 2013-2014 CRDC data and found that EL students made up 0.2% of the 3,978 total students in the District's gifted program (*i.e.*, approximately 8 of the 3,978 students in the gifted and talented program were EL students). Comparing EL and non-EL rates of participation, EL students accessed the gifted and talented program at a rate of 0.3% (8 of 2,346 EL students), as compared to their non-EL peers, who participated in gifted talented programs at a rate of 10.8% (3,970 of 36,872). In other words, non-EL students were approximately 36 times more likely than EL students to participate in the District's gifted and talented program. The difference between the EL and non-EL rates of gifted and talented participation was statistically significant. As with inclusion in the gifted and talented program, the CRDC data showed minimal enrollment rates for EL students in advanced math and science courses: 0% of students in physics were EL students (0 of 500); 0.4% of students in calculus were EL students (approximately 2 of 544); and 0.4% of students in chemistry were EL students (approximately 6 of 1,604). Similarly, the participation rate for EL students in advancement placement courses was below 1%, at 0.3%, reflecting approximately 7 EL students of the 2,471 students enrolled in advanced placement courses.

Of the 84 EL students whose files OCR reviewed, 8 of them were in advanced courses for a core class. Of the eight EL students in advanced core classes, six were in honors Spanish (and all six of those EL students were native Spanish speakers).

OCR has concerns that the lack of EL student participation in gifted programs, advanced placement courses, and advanced core courses indicates that the District is not addressing barriers to the inclusion of EL students in advanced academic programs. OCR also has preliminary concerns regarding the participation of EL students in extracurricular activities. The ESL Case Manager noted that the District leaves the decision whether to provide an EL student with language services during extracurricular activities to each individual school as there is no

requirement in the District to do so. The ESL Case Manager provided an example of an EL student in an after school sewing club that was provided language assistance by former-EL students who had exited the ALP in order for the student to participate in the club.

### **E. Special Education and Related Services**

School districts must ensure that all EL students who may have a disability, like all other students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner. When conducting such evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. School districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency. School districts must provide EL students with disabilities with both the language assistance and disability-related services to which they are entitled under Federal law.

The principal at Forest Hills High School informed OCR that the school's assistant principal is the "Special Needs Administrator" who is also part of the LEP team<sup>8</sup>. She is responsible for managing the 504 and individualized education plans (IEP) for all students identified as exceptional children and working with the ESL teachers to ensure that modifications are implemented appropriately. The ESL Case Manager told OCR that there is often an evaluation done by a District psychologist who may call on the ESL Case Manager to provide language assistance or administer the Woodcock-Munoz language proficiency test. Based on the results of the test, the psychologist will determine whether the student is proficient enough to be tested for special education services in English or if there is a need to test them in their native language. The ESL Case Manager noted that the District has a Spanish speaking psychologist on staff, but that if a student needed language assistance for evaluation purposes in a language other than Spanish, he stated that the District might conduct some "non-verbal assessments."

OCR reviewed data to compare the percentage of EL students receiving disability-related services, under IDEA or Section 504, to the percentage of non-EL students receiving those same services. According to OCR's 2013-2014 CRDC data, 338 of the 2,284 EL students in the District also received services under IDEA, meaning that 14.8% of EL students received services under IDEA.<sup>9</sup> In comparison, 8.9% of the non-EL student population received IDEA services (*i.e.*, 3,511 of 39,280 students). While the percentage of EL students served under IDEA was above the percentage for the non-EL student population, OCR's 2013-2014 CRDC data reflected a comparatively lower percentage of EL students receiving services under Section 504: the District reported that 0.6% of EL students also received services under Section 504 (*i.e.*, 14 of the 2,284 EL students), as compared to the 3.5% of the overall student population receiving

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<sup>8</sup> As previously noted, there is a LEP Team in place at each school in the District. While OCR cannot confirm whether each school has a "Special Needs Administrator," interviews confirmed that the LEP Team works with special education staff to ensure that students identified as EL students with a disability are receiving necessary services for their language and special education needs.

<sup>9</sup> EL students comprised 8.8% of the students receiving services under IDEA.

services under Section 504 (*i.e.*, 1,388 of the 39,280 students).<sup>10</sup> The difference between EL and non-EL rates of receiving Section 504 services was statistically significant.

OCR has concerns that the District's process for evaluating EL students for special education services under Section 504 is not accurately identifying the students who qualify for services. Specifically, OCR has concerns that the District does not consistently account for the language proficiency of EL students, causing it to over-identify ELs as needing special education services, and that the District delays or denies special education services for ELs based on their language proficiency, leading to under-identification. First, the District may over-identify EL students for special education services due to communication challenges between the psychologists administering the evaluations and ELs, particularly if interpreters are not routinely available to overcome language barriers during the evaluation process. While the District utilized a Universal Nonverbal Intelligence Test (UNIT), a test designed to measure aptitude when language barriers present accuracy challenges, the District did not have clear standards for when its use would be appropriate and IEPs reviewed reflected inconsistent offering of the assessment. On some occasions, IEPs for EL students reflected initial administration of the UNIT, on other occasions the UNIT was administered after language proficiency issues became apparent while administering a verbal test, and in the last circumstance the UNIT was not administered. For other students whose dominant language was Spanish, the student's IEP indicates the student was assessed in both Spanish and English. But, again, it is unclear when EL students were also assessed in their native language. Similarly, OCR has concerns that some EL students were denied or delayed in the receipt of special education services on the basis of their language proficiency. For instance, one student's IEP noted: "The IEP team rejected finding [the student] eligible for special education services at this time based on her limited English proficiency. She is not proficient in English, therefore, it cannot be determined if she has a disability or if she is struggling due to her limited English proficiency."

## **F. Segregation**

School districts may not unjustifiably segregate students on the basis of national origin or EL status. OCR's inquiry in this area focuses on whether the school district has carried out its chosen program in the least segregated manner consistent with achieving its stated goals.

OCR's interviews with school ESL staff and review of the District's ALP documentation indicates that the District employs a co-teaching model with ESL teachers joining the regular education classroom to work with EL students. While that may at times require small group work and there are instances where students receive pull out services if necessary, the bulk of the instruction/service provision takes place in the general education classroom.

Because the majority of the service provision and language instruction happens in the context of the general education classroom and students are rarely pulled out of the general education classroom, OCR has not identified any concerns with regard to the segregation of EL students in the District's ALP.

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<sup>10</sup> EL students made up 1.0% of the students receiving Section 504 services, with 1.1% of male EL students receiving services and no female EL student receiving services.

### **G. Program Evaluation**

Districts that have designed and implemented programs for EL students must have procedures for monitoring the program to ensure the districts are effectively meeting the needs of EL students. To assess whether an EL program is succeeding in overcoming language barriers within a reasonable period of time, districts must consider accurate data that permit a comprehensive and reliable comparison of how EL students in the EL program, EL students who exited the program, and never-EL students are performing on criteria relevant to participation in the district's educational programs over time. Districts that do not periodically evaluate their programs and correct deficiencies are in violation of the regulation implementing Title VI.

The District informed OCR that its program evaluation consists of a parent survey, which the District noted gets few responses, and the state of North Carolina's Department of Public Instruction (NCDPI)'s Annual Measurable Achievement Objectives (AMAOs). The ESL program parent survey for 2015 asked parents to answer whether they "strongly agree," "agree," "have no opinion," "disagree," or "strongly disagree" to general statements such as, "I am pleased with the education my child is receiving in the Union County Public Schools," and, "I am pleased with the services my child is receiving through the ESL program." While the responses are largely positive, the data is presented in the form of pie charts with percentage breakdowns and no information as to the number of responses received versus the size of the EL population. Even if every District parent provided a response to the parent survey, the information obtained would not be sufficient to provide a useful assessment of the effectiveness of the District's ALP in helping EL students attain language and content proficiency. Additionally, while the state of North Carolina conducts assessments for all of its districts, the information provided by the District does not specifically explain how those assessments accurately evaluate the implementation and effectiveness of the District's ALP. The District also has not provided OCR with any information as to what the District does with the information once the results of the AMAO assessment are released.

Therefore, OCR has concerns that the District is relying on minimal data that does not accurately reflect the effectiveness of, or potential issues with, its ALP and may be out of compliance with its Title VI responsibility to periodically evaluate its ALP and maintain data related to the progress of students in the program and the correction of any deficiencies identified by the program evaluation.

### **H. Parental Communication**

School districts must ensure meaningful communication with LEP parents/guardians in a language they can understand and must adequately notify national-origin minority group parents of information that is called to the attention of other parents/guardians, and that such notice may have to be provided in a language other than English in order to be adequate. Districts must develop and implement a process for determining whether parents/guardians are LEP and what their language needs are. The process should be designed to identify all LEP parents/guardians, including parents or guardians of children who are proficient in English and parents and guardians whose primary language is not common in the district.

The District indicated that it becomes aware of LEP parents' desire to have documents translated into another language through a parent/guardian survey issued by the English as a Second Language Program asking about preferred language. The District further noted that it offers IEP and limited English proficient (LEP) plans in English and Spanish. In terms of interpretation services, the District, while acknowledging it does not have a formal plan, noted that it offers interpretation services at various points: initial enrollment, notification of school functions, and IEP and LEP meetings. At Forest Hills High School, the homeroom teacher typically keeps track of which families require translated documents but no formal tracking system was identified.

The District employs an ESL Parent Engagement Coordinator who conducts quarterly workshops for LEP parents and works directly with parents and students at the ESL Academic Support Center. Through a Latino Outreach Program, the Coordinator offers workshops on a variety of topics, including parenting skills, healthy living, and higher education opportunities. Recently, the Latino Outreach Program hosted a college night for parents during which presenters reviewed information concerning college applications, financial aid, and scholarships. The District also provides interpretation services through its own employees. The District provided OCR with a list of six identified interpreters (not including ASL interpreters). Of the six interpreters, four were Spanish interpreters, one was listed as a "Chinese" interpreter, and another listed "Russian, Ukrainian, German, Italian, and French" as the languages she interprets into and out of. The District utilizes its ESL Case Manager as its primary interpreter. While a native speaker, the ESL Case Manager indicated to OCR that he is not qualified (meaning that he is not trained on the role of an interpreter, the ethics of interpretation, and the need to maintain confidentiality). Documentation provided to OCR confirmed that the relied-upon ESL Case Manager has not received any formal interpretation training. The principal at Forest Hills High School indicated that the school will occasionally rely upon the school guidance counselor, who was a former Spanish teacher and speaks Spanish, to translate documents. Similarly, the school relies upon untrained administrators and teachers, who speak Spanish, to provide interpretation services. Students in the student focus groups noted that they have served as interpreter or translator for their parent/guardian on multiple occasions. The ESL Case Manager also noted that at times, in particular when a parent speaks a language other than Spanish, the District will depend on family members or friends provided by the parent to act as interpreters or translators.

OCR has concerns that some schools in the District are relying on students/siblings/friends and/or other untrained staff to translate or interpret for parents. Multiple staff who have not received training in interpretation or translation indicated to OCR that they have filled the role of translator or interpreter in the past. As noted above, the ESL Case Manager stated that he serves as interpreter, but is not trained to do so. The ESL Case Manager also indicated that bilingual teachers are utilized to provide interpretation services in Russian and Chinese. It appears that these and other teachers are deemed "qualified" to provide interpretation services solely because they are bilingual. Additionally, several principals in the District, including the principal at Forest Hills High School, confirmed that interpretation and translation services are not always provided by qualified staff. The ESL Case Manager told OCR that if it were necessary, he could seek interpretation services from an outside organization, but he has not had to do so yet.

The documentation provided by the District does indicate that there is a process for requesting translation and interpretation of documents. Specifically, translation request forms must be filled out, indicating the school, class, student/parent and details of the request. Those forms are then sent to the ESL Manager who processes the request. The translation request forms reviewed by OCR indicate a *minimum* of two weeks for documents to be translated and provided to the requester. Interviews with the ESL Manager and other District staff corroborate that this is the process for obtaining translation/interpretation services. Teachers and staff appeared to understand that official translation of documents needed to be requested through the ESL Academy Support Center, but the evidence shows that those requests are not always made and that unqualified staff and family members/students are sometimes utilized to provide these services to LEP parents.

OCR's review of student files found that IEPs, report cards, notices related to IEP meetings, testing, and eligibility for services, and the home language survey have not been consistently translated into the preferred language noted by LEP parents in the District. The ESL Case Manager who interprets for Spanish-speaking parents at IEP meetings indicated that he always offers these parents the opportunity to have the IEP translated into Spanish. He stated that most parents opt to receive a translated copy of the IEP. The principal at Forest Hills was unaware of whether IEP notes were automatically translated for LEP parents.

OCR's investigation into the District's communication with LEP parents has identified violations of Title VI. Specifically, OCR finds that the use of students, unqualified staff, and friends as interpreters and the failure to consistently provide translation or interpretation of vital documents constitutes a violation of Title VI. Many students stated to OCR that they have provided translation and interpretation services for their parents/guardians during their time in the District. OCR's finding that the District is out of compliance with Title VI will be resolved with the implementation of the attached Agreement.

### **Conclusion**

As stated above, during the course of its investigation, OCR found that the District was not in compliance with the regulation implementing Title VI regarding the District's communication with LEP parents/guardians. In areas where OCR did not make Title VI compliance determinations, OCR still noted concerns; including the possible over/under-identification of EL students as a result of the District's current identification and assessment policies and procedures, the effective implementation of its alternative language programs, access to special programs and extracurricular activities, program evaluation, and evaluation for and provision of special education services. OCR found evidence that the resources allotted for EL students may not be distributed consistently to all EL students, and noted concerns regarding the qualifications of ESL teachers.

Prior to the completion of OCR's investigation, the District expressed its interest in resolving all identified compliance concerns and any remaining issues without further investigation. Accordingly, on October 5, 2016, OCR entered into a resolution agreement with the District to resolve the compliance review. The resolution agreement will require the District to:

- Ensure that every PHLOTE student will be identified and assessed by the District, including students from low-incidence language groups;
- Effectively implement a comprehensive alternative language program and track the participation and performance of students in the program;
- Provide English language services and instruction to all EL students in all educational settings, including special education and extracurricular activities;
- Ensure that all EL students receive alternative language services until the students meet the District's criteria to exit the alternative language program;
- Provide notification of the placement for each EL student and the benefits derived from participation in the alternative language program to each EL student's parent/guardian in a language LEP parents can understand;
- Monitor the academic progress of students whose parents have declined or opted out of the alternative language program, and provide other language support services for such students;
- Have a sufficient number of certified, trained ESL and/or bilingual teachers to implement its selected alternative language program;
- Provide training on its alternative language program methodologies to all individuals responsible for its implementation;
- Provide instructional materials, appropriate to the curriculum, and comparable in quality, availability, and grade level to materials provided for the instruction of non-EL students, to effectively implement its selected alternative language service model for the instruction of EL students;
- Identify and describe the criteria that it will use to determine when an EL student has obtained sufficient proficiency in English to exit the alternative language program; and to monitor exited EL students to ensure that the students are participating meaningfully in the District's program;
- Develop and implement a procedure to measure the effectiveness of its alternative language program;
- Ensure that EL students with or suspected of having disabilities are appropriately evaluated, placed, and provided with appropriate special education or related aids and services, as well as alternative language services;
- Revise and implement its policies and procedures to ensure that LEP parents are notified, in a language understood by the parents, of school activities and other information and matters that are called to the attention of other parents;
- Ensure that EL students have an equal opportunity to participate in gifted and talented, advanced placement, or other specialized programs; and
- Convene one or more parent forums, in a language the parents can understand, to provide District parents with information regarding the alternative language program, including identification and assessment of students, alternative language services, exit criteria, and monitoring.

The new or revised policies and procedures developed by the District require OCR review and approval under the Agreement. OCR will monitor implementation of the Agreement. If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to

enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

Under the Freedom of Information Act, it may be necessary to release this letter 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 law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the cooperation extended by you and your staff, especially Michele Morris, to resolve the compliance review. Should you have any questions, please contact Sebastian Amar at (202) 453-6023 or via email at [sebastian.amar@ed.gov](mailto:sebastian.amar@ed.gov) or Marcelo Quiñones at (202) 453-6567 or via email at [marcelo.quinones@ed.gov](mailto:marcelo.quinones@ed.gov).

Sincerely,

/s/

Alice Wender  
Director  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Michele Morris, Esq.