



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

March 8, 2017

Dr. Ray Rogers
Superintendent
Dillon School District 04
405 West Washington Street
Dillon, South Carolina 29536

Re: OCR Compliance Review No. 11-15-5002
Letter of Findings

Dear Dr. Rogers:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its compliance review examining whether Dillon School District 04 (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. Because the District is a recipient of Federal financial assistance, OCR has jurisdiction to conduct this compliance review under Title VI.

OCR appreciates the District's cooperation from the outset of this review, its proactive efforts to date, and its commitment to addressing the review findings.

In reaching a determination, OCR reviewed documents provided by the District, including: (1) policies and procedures regarding the provision of educational services to EL students; (2) a description of the District's alternative language program; (3) a list of District personnel responsible for EL service provision 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) documentation concerning students who exited the District's EL program; (6) the District's evaluations of its EL program; (7) documentation regarding the District's gifted and talented program and lists of students identified as gifted and talented; (8) EL student files 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 OCR's review of documentation, OCR conducted a site visit to the District in May 2016. During the site visit, OCR interviewed District administrators and staff at every one of the District's eight schools.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

After carefully considering all of the information obtained during the investigation, OCR found the District in violation of Title VI as it relates to the following areas: communication with LEP parents and guardians; providing appropriate language assistance services to all EL students; training EL staff adequately; and evaluating its EL program on a periodic basis. OCR identified compliance concerns, which the District agreed to resolve prior to the conclusion of OCR’s investigation, in the District’s identification and assessment of EL students, EL resources and materials, monitoring of EL students in the EL program and exited EL students, EL students’ access to specialized programs such as the District’s gifted and talented program, and identification of EL students for special education services. Finally, OCR found insufficient evidence to support a finding of a Title VI violation for unnecessary segregation of EL students.

OCR’s findings and conclusions are discussed below.

Background

The District is located in South Carolina, northeast of the city of Columbia. The District is composed of eight schools, including five elementary schools, a middle school, and two high schools.

During the 2014-2015 school year, the District enrolled 4,280 students in its eight schools. The racial/ethnic composition of the students enrolled in the District as of March 2015 was as follows:

Student Enrollment by Race/Ethnicity 2014-2015 School Year¹

White	Black	Hispanic	Asian	Native American or Alaska Native	Multiracial	Native Hawaiian or Pacific Islander	TOTAL
1198	2588	206	13	125	145	4	4279
27.9%	60.4%	4.8%	0.30%	2.9%	3.3%	0.09%	100%

The District’s EL student population has remained relatively steady recently. In 2011-2012, OCR’s CRDC data reported 253 EL students making up 5.8% of the overall student population. In the three-year period after 2011-2012, the EL student population in the District fell slightly to 213 students or 5.0% of the student population.²

Legal Standards

Title VI and its implementing regulation prohibit discrimination on the basis of race, color, or national origin by recipients 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,

¹ Source: data provided by the District in excel spreadsheet covering District and school enrollments

² Source: Civil Rights Data Collection available at <http://ocrdata.ed.gov/Page?t=d&eid=31896&syk=6&pid=1001>

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 (*1970 OCR Guidance*). 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.

Title VI’s prohibition on national origin discrimination requires districts to take affirmative steps to address language barriers so that EL students may participate effectively in the districts’ educational programs. See *Lau v. Nichols*, 414 U.S. 563 (1974) (affirming *1970 OCR Guidance* and stating that where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, Title VI requires that the district take affirmative steps to rectify the language deficiency to open its instructional program to these students).

Analysis

A. Identification and Assessment

Districts must take affirmative steps to address national-origin minority students’ language barriers that prevent English learner (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 by administering 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 sets forth its written policy and procedures for identifying students PHLOTE students in the English for Speakers of Others Language (ESOL) program procedures. The District utilizes a home language survey (HLS) to determine the student's primary language. After a parent/guardian completes the HLS at the time of registration, the District makes its primary home language decision based on three language background questions on the HLS asking the parent/guardian to identify the student's first language, the language most often spoken by the child, and the language spoken in the home. According to the District's procedures for registering EL students, a selection of any language other than English for any of these three language background questions on the HLS will result in an immediate referral to the ESOL Coordinator for testing. The District's procedures for registering EL students list the school's enrollment person as the individual tasked with notifying the ESOL Coordinator of a PHLOTE student's enrollment.

District- and school-level administrators and staff confirmed the application of these identification procedures. The District's Director of Student Services stated that the District complies with the requirement to administer the HLS to all students upon enrollment and listed the language background questions included in the HLS. Just as the Director of Student Services affirmed application of the District's procedures for registering EL students, school-level staff, in particular those responsible for registering students, asserted that they have all parents/guardians complete the HLS at enrollment, with a few volunteering that a selection of any language other than English for any of the three primary language questions would result in referral to an EL teacher for testing.

OCR's review of EL student files confirmed that the District administers the HLS and places the HLS in the student's file, as each file reviewed by OCR contained an HLS. And, consistent with the District's procedures, EL student files reviewed by OCR reflected that the District assessed students when a parent/guardian selected a language other than English for one of the language background questions.

In addition to identification by way of home language survey, District administrators and school staff often mentioned teacher referral and the continuation of EL services received by a student at a prior school as additional methods of EL identification. As provided for in the District's identification procedures, school administrators, along with staff, asserted that a teacher could refer a student for an assessment to determine any need for EL services. Some high school and middle school administrators also explained that students who were receiving EL services at a prior school would already be identified as an EL student.

Assessment

Under the District's ESOL procedures, a school's enrollment person will immediately refer any student for which a parent indicates any language other than English on the language background questions to the ESOL Coordinator for testing. While the procedures provide that the ESOL Coordinator will then test identified students for English proficiency by administering the Language Assessment Scales (LAS) test within the first ten days of enrollment³, the XXXX

³ The District's ESOL procedures provide the following related to the assessment of PHLOTE students: The Language Assessment Scales test is designed to assess a student's competency in all four language domains (*i.e.*,

teacher identified the World-Class Instructional Design Assessment (WIDA⁴) Assessing Comprehension and Communication in English State-to-State for English Language Learners (ACCESS) Placement Test (W-APT) as the EL screener employed by the District. The District plan from October 2014 and the District ESOL resource page from May 2015 also list W-APT as the screening assessment for EL students. The District provided to OCR assessment calendars reflecting use of the LAS assessment up until the 2014-2015 school year when the District transitioned to the W-APT. As asserted by the District EL teacher and confirmed on the WIDA website, the W-APT measures all four language domains, *i.e.*, listening, speaking, reading, and writing.⁵

The XXXX teacher asserted that there is a thirty-day window in which to complete the identification of EL students and added that, generally, one of the EL teachers will assess and process assessment results within ten days for a PHLOTE student who joins the District after the first day of school. In the case of a XXXX student who started with the District at the start of the 2016-2017 school year, the District had the parents/guardians complete a home language survey and the second EL teacher assessed the student using the W-APT screener on XXXX, twelve days after the student's XXXX enrollment and seven days after the first day of school. The student's parents were informed of the EL student placement within thirty days, on XXXX. Likewise, for a XXXX student who entered the District in XXXX, the student's file reflects that the District had the parent/guardians complete the home language survey on XXXX, and administered the W-APT screener five days later, on XXXX. Other XXXX EL student files reflected timely assessment after the student was identified as a PHLOTE student.

OCR next considered whether District personnel responsible for administering the W-APT were qualified to administer the assessment. 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 District indicated that the EL teachers schedule screening assessments and conduct the screenings. The XXXX teacher participates in the WIDA online training on the W-APT but did not recall attending any in-person training. Until a XXXX joined the District, the XXXX teacher served as the only EL student screener. The District clarified that the XXXX teacher has also viewed the WIDA training videos.

Although District administrators and staff were generally consistent in identifying the W-APT as the screening assessment utilized by the District and PHLOTE students appear to be assessed

reading, writing, listening, and speaking). Immediately after the test results are available, the District holds a conference with the parent/guardian to discuss the test results.

⁴ WIDA, which was formerly an acronym for World-Class Instructional Design and Assessment, is a non-profit cooperative group whose purpose is to advance the academic language development and academic achievement for children and youth who are culturally and linguistically diverse through high-quality standards, assessments, research, and professional learning for educators. WIDA advances this mission, in part, by developing standards,

⁵ The kindergarten W-APT, which is designed for administration to pre-kindergarten, kindergarten and first-semester first graders, includes a combined listening and speaking component and reading and writing sections that are optional for students with some literacy skills.

consistently and in a timely manner, OCR has a concern that the lack of consistency in the assessment identified in the District's procedures and stated practices could lead to confusion as to the assessment with which PHLOTE students are to be screened and to inaccurate information being shared with parents/guardians and community members regarding the screening process.

B. Program Design and Delivery

i. Alternative Language Program Model

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

Districts must provide appropriate language assistance services to EL students until they are proficient in English and can participate effectively 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 Fifth Circuit Court of Appeals outlined standards by which to determine whether a district's program for LEP students complies with Title VI in *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). Under *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.

The District utilizes an English as a Second Language (ESL) program with an emphasis on the Sheltered Instruction Observation Protocol (SIOP) model for its alternative language program. In its ESOL Program Description Procedural Guidelines, the District explains that EL services are provided through pull-out services and small-group instruction. Schools provide various levels of ESL instruction to meet the proficiency needs of EL students. Additionally, in order to provide services in core classes, EL teachers coordinate with classroom teachers and assist students with content work when needed. The ESOL program guidelines include a description of strategies to be employed by the EL teacher: teaches language and course content; uses images, diagrams, charts, and tables to help students understand the content of subjects; develops students' listening, speaking, reading, and writing skills; uses games, dialogues, stories, music, and poems to allow students to experience and enjoy language; and uses experiments and activities to teach new concepts in science, social studies, and math.

Although the ESOL program guidelines and procedures produced by the District to OCR do not mention the SIOP model or its application, the XXXX and the XXXX asserted that the District currently utilizes this model to inform its pull-out services for EL students and coordination with content area teachers. OCR learned from the Director of Student Services that the implementation of the SIOP model dates back to 2011. As outlined in the 2011 SIOP training materials provided by the District, the SIOP framework 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 XXXX teacher described the application of the SIOP framework to the pull-out services offered by the District. For pull-out services provided by the EL teachers, the EL teachers apply SIOP strategies learned in training and utilize SIOP concepts integrated into the District's standard lesson plans. Other EL students who do not receive pull-out services are to be assisted by their classroom teacher implementing accommodations or modifications as discussed with the EL teacher.

The District categorizes its EL students by English language proficiency level and provides varying services to EL students by proficiency level. The District employs eight proficiency levels from pre-functional (level 1) to exited students (level 8).⁶

Based upon the information obtained and reviewed by OCR, the District's chosen instructional ESL and SIOP models for providing English language instruction are recognized by some experts in the field as based upon a sound educational approach.

i. Alternative Language Program Implementation

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 EL students from the program.

1. Participation

The District offers differing services to EL students based on their English proficiency level. In its ESOL Instructional Program Models chart, the District outlines the types of services offered to EL students based on their language proficiency. The chart provides that level-one EL students receive pull-out services in small groups, level-two students receive ESOL services instead of exploratory or special area classes, level-three students receive ESOL services through itinerant services on a weekly or bi-monthly basis, level-four students are not pulled out of any classes and may have classwork or homework adjusted according to their proficiency, and level-five students receive instruction in the four domains as well as content instruction (without being pulled out for small-group instruction). The XXXX Teacher generally confirmed the assignment

⁶ The following is the complete list of the eight proficiency categories: level 1, pre-functional – speaks a few words or phrases only, if any, and cannot read textbook, handouts, or information on Promethean board; level 2, beginner – speaks in short sentences or phrases, repeats a lot, beginning conversational English, and beginning to read a few words; level 3, intermediate – developing a good grasp of conversational English and beginning to develop some reading and writing skills; level 4, advanced – beginning to read with understanding but rarely on grade level and developing academic vocabulary and writing skills; level 5, English proficient, speaks English almost as well as native English speakers but may not be on grade level; level 6, first-year exit, speaks English almost as well as native English speakers but may not be on grade level; level 7, second-year exit, speaks English almost as well as native English speakers and generally able to function alone; and level 8, a student no longer to be considered limited-English proficient.

of these types of EL services by proficiency level. Up until the 2015-2016 school year, the XXXX teacher provided pull-out services to EL students at proficiency levels one and two; during the 2015-2016 school year, the XXXX teacher was able to include EL students at a proficiency level three in her pull-out sessions. The District does not offer pull-out services to any students with an English language proficiency level above three; instead, the XXXX teacher explained that classroom teachers are responsible for offering EL services for that particular EL student population.

Although the XXXX teacher described her efforts to ensure that all EL students are receiving some form of services and school staff generally confirmed the provision of pull-out services for a subset of EL students, OCR's interviews of administrators and teachers raised questions as to whether the District provides EL services to all EL students.

Multiple school administrators and additional school staff affirmed that EL students at English proficiency levels one and two received pull-out services from XXXX teachers. But it is less certain what, if any, EL services are offered to EL students who are classified as levels four and five (and any level-three students not included in the expanded pull-out services). The XXXX teacher asserted that she speaks to teachers two to three times per week about struggling students, but she does not document these discussions. And the XXXX teacher added that, for students above a level three and a half, it typically falls to the classroom teacher (particularly in high school classes) to provide services to EL students. For instance, XXXX teacher described implementing the following recommendations from the XXXX teacher: shortening tests, providing online translations of texts, and offering extended time on assessments. Similarly, another XXXX teacher offered shortening tests and administering informal assessments as services offered to his EL students, while acknowledging that he does not employ any language assistance strategies.

These statements regarding the types of services offered to EL students at proficiency levels three and above are corroborated by a listing of EL students and their accommodations during the 2014-2015 school year: many EL students with a proficiency of three or greater listed have their services identified as "ESL mainstream with accommodations." Along with EL students above proficiency level three, the XXXX teacher identified XXXX and XXXX grade EL students as another subset of EL students potentially not receiving pull-out services, though the XXXX teacher qualified this statement by adding that the XXXX teacher may have pulled some of these students out during the 2015-2016 school year.

According to some administrators and staff, EL services for students in English proficiency levels three to five consist of any strategies and accommodations implemented by classroom teachers through informal coordination with EL teachers and tracking of implemented accommodations on an accommodation forms. A number of administrators, a staff member, and multiple teachers confirmed the discussion and documenting of accommodations on the accommodations form. The accommodations form includes three types of accommodations: note taking and reading in content areas; class instruction and test-taking modifications; and resources/general. The note-taking and reading section lists a number of accommodations such as reduced note-taking, student vocabulary translations, working with partners, playing word games, and pre-teach vocabulary. Similarly, the class instruction area includes a number of

potential accommodations: focus on sight word vocabulary; allot more time for reading assignments; rephrase questions and directions; and flash cards. Finally, the resources/general section includes using pictures, illustrations/videos, and providing preferential seating as accommodations.

OCR notes that the implementation of the accommodations form cannot act as a substitute for the provision of EL services. The District's model for serving EL students, SIOP (using pull-out services and small group instruction), requires the implementation of particular language assistance strategies by trained staff. To substitute the training of staff in the SIOP model and associated strategies – and implementation of SIOP strategies – for accommodations not directly tied to the alternative language program does not constitute appropriate EL services or reflect *bona fide* efforts to implement the SIOP model.

Even if the implementation of the accommodations form constituted appropriate language assistance services, the statements of some staff further called into question whether the accommodations form is implemented. XXXX stated that the educational services provided to EL students who are levels three to five are essentially the same as those provided to non-EL students. Along with XXXX, teachers indicated that they use general teaching strategies to serve EL students, with XXXX teacher adding that she does not complete the accommodations form. Moreover, XXXX stated that EL students at higher proficiency levels did not need EL services, and a second XXXX asserted that EL services are first offered at second or third grade, unless a student shows a need to receive services at an earlier grade.

OCR's review of EL student files confirmed that the EL teacher-classroom teacher collaboration employed by the District to serve EL students of higher English language proficiency levels produces uneven access to the EL program for those students. A few of the student files reflected that EL students at certain grade levels had been placed in a strictly mainstream placement without EL services and in other circumstances EL students assigned to a mainstream with accommodations placement did not receive accommodations in the classroom. OCR reviewed at least three student files reflecting a failure to offer EL services in regular education classrooms: a level-five student had references to EL services crossed out on their accommodation form, a second student file contained a blank accommodations form with a handwritten note stating "no accommodations", and a level-five student's file also included an accommodations form with a "no accommodations" note. These classroom teachers, who were tasked under the program model and service placement with providing EL services to students, documented a decision to forego the prescribed services. In effect, this decision prematurely exited EL students of higher English language proficiency levels from the EL program.

The inconsistency in providing EL services to all EL students may also contribute to the high number of long-term EL students in the District. The District acknowledged that there are a number of such students and recalled questions from the State about those students, while stating that the District has yet to attempt new strategies to meet the needs of these students. OCR reviewed the student file for a long-term EL student, who entered the District in XXXX grade and is still in the program as a XXXX grader. OCR found that the accommodations form for the student was completed by the various classroom teachers, yet noted that there was no

documentation reflecting that the District took steps to address a demonstrated long-term weakness in writing.

OCR found that the District does not ensure the provision of appropriate language assistance services to all EL students. Instead, some EL students who are of higher language proficiency and not placed in pull-out services do not receive any EL services; classroom teachers of these students complete checklists tracking the implementation of certain accommodations, which are not directly tied to the District's chosen model for serving EL students. In interviews with staff at the various schools, it was unclear the extent to which the collaboration between the EL teacher and general education teachers relied upon to provide EL services to EL students above a proficiency level three occurs, the nature of that collaboration, and the degree to which general education teachers provide EL services in the classroom. And at least two teachers asserted that they only use general teaching strategies. Based on the lack of defined and documented collaboration, the statements calling into question whether classroom teachers consistently offered EL accommodations, the sufficiency of the accommodations checklist as a form of EL service provision, and the documentation of EL students above level three not being assigned or not receiving assigned accommodations, OCR found that the District failed to provide EL services to all EL students. Therefore, OCR finds the District out of compliance with its responsibilities under Title VI to provide appropriate language assistance services to all EL students until they are proficient in English and can participate effectively in the District's educational programs without language assistance services.

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.

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.

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.

During the 2015-2016 school year, two teachers provided pull-out services to EL students. One EL teacher has served in this role since the XXXX school year, while the other EL teacher joined the District for the XXXX school year. The District requires ESOL certification or an ESOL add-on certification worksheet to be on file with the South Carolina Department of Education Division of Teacher Quality in its job description for a teacher of English for speakers of other languages. In order to gain ESOL certification, an individual must have second language learning experience (which can be satisfied by earning six semester hours of college credit, demonstrating language proficiency, placement in a third-year level course at an accredited college or university, or completion of an intensive language training by listed providers) and meet course content requirements, including linguistics, and courses on principles and strategies for teaching EL students and teaching reading and writing to EL students.

XXXX PARAGRAPH REDACTED XXXX

The low number of EL staff members in the District impacts the amount and type of EL services offered to students in the District. As noted above, XXXX teacher is currently working towards ESOL certification. Likewise, XXXX teacher, who joined the District for the XXXX school year and also provides pull-out services, lacks ESOL certification, though she has also begun working towards certification. This lack of certification may impact the XXXX teacher's ability to provide ESL instruction during pull-out sessions. For pull-out services provided by the EL teacher, the EL teacher applies strategies learned in SIOP training and utilizes SIOP concepts integrated into the District's standard lesson plans. It is unclear whether the XXXX teacher applies the same strategies during pull-out sessions; an assistant principal indicated that it is his understanding that the XXXX teacher has EL students work on Rosetta Stone during pull-out sessions. This contrasts with the pull-out ESL lesson witnessed by OCR during its site visit, a lesson in which the XXXX teacher implemented strategies from the District's alternative language program, consistent with the SIOP and ESL models, in direct and guided instruction. Not only does the limited staff potentially impact the nature of services, it requires the District to rely on the EL teacher-classroom teacher collaboration, which, as described above, is not clearly tied to the alternative language program.

Based on its investigation, OCR determined that there was sufficient evidence to conclude that the District has not sufficiently trained staff responsible for providing language assistance services to EL students. Specifically, EL students are receiving EL instruction from staff who have not received any training on providing EL instruction or on the District's alternative language program model, and the small number of staff providing EL services limits the amount of EL services received by EL students, particularly those at higher English language proficiency levels. Therefore, OCR found the District in violation of the regulation implementing Title VI for its failure to adequately train staff.

Materials and Resources

In order to ensure that English language development services are delivered effectively, 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 District asserted that it utilizes an assortment of resources, which differ from school to school, in providing EL services. While district- and school-level staff did cite various resources that the District could offer to EL students, it was not clear to OCR from the description of these resources whether and how the resources align to the District's EL program and assist EL students in developing their English language proficiency, accessing course content, and improving content-based knowledge in a manner comparable to their English-speaking peers. At the district level, the XXXX stated that the District utilizes Rosetta Stone, EL textbooks, and a website offering creative online programs. The District provided to OCR in response to a request for EL materials a webpage from the District website listing online resources such as a visual thesaurus, a catalog of lessons available on Rosetta Stone, and links to the XXXX teacher's two video trainings. School staff interviewed by OCR identified the following EL resources: recently ordered textbooks and workbooks for teachers to use along with the English versions, an audio program for students to listen to conversations in English, Rosetta Stone, word-to-word dictionaries, classroom labels, and manipulatives.

The question as to how the technology and resources listed would enable EL students to achieve proficiency and access course content in a manner comparable to their non-EL peers became more prominent when a primary provider of EL services noted that EL resources could be improved. At least one teacher who regularly instructs EL students expressed some concern about the availability of resources to carry out the EL program, describing resources for the program as an area that could be improved upon greatly. OCR also noted that, since EL pull-out services float from classroom to classroom (and school to school), the XXXX teacher does not have books or other resources to be used for pull-out services. The XXXX teacher does attempt to incorporate technology and visuals into lessons where possible. In terms of what is available for other aspects of the EL program, the XXXX teacher stated that some bilingual resources (in English and Spanish) are available in classroom libraries but cautioned that not all EL students may be able to access these resources since even the Spanish-speaking EL students may not read Spanish.

The evidence OCR reviewed indicated that the District has EL resources and materials in at least some classrooms, but staff primarily responsible for providing EL services identified concerns regarding the availability of materials and resources. Prior to the conclusion of OCR's investigation into the adequacy of the materials and resources provided by the District, the District expressed interest in resolving this concern pursuant to Section 302 of OCR's *CPM*, and OCR determined that it was appropriate to do so. Therefore, OCR did not make a compliance determination as to the adequacy of the District's materials and resources for EL students.

C. Monitoring and Exiting Students from the EL Program

School districts must monitor the progress of all 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.

The District asserted that it monitors the progress of EL students in the alternative language program through an assessment and benchmark model applied to all students. The District's XXXX stated that the monitoring of EL students in the program is done at the school level, with schools administering daily assessments and keeping track of whether students are meeting benchmarks, referred to as measures of academic progress. When OCR asked about documentation of this monitoring, the XXXX indicated that the District primarily relies on progress reports and state assessments to measure EL students' progress. OCR reviewed EL student files for documentation corroborating these monitoring efforts. Consistent with the Director's assertions, the majority of EL student files reviewed by OCR reflected inclusion of report cards, ACCESS and ELDA scores, and other state assessment scores. But the files did not contain any documentation indicative of a monitoring system including benchmarks for expected growth in academic content knowledge. The District should set these benchmarks to identify EL students who are not adequately progressing towards academic content knowledge goal and to take appropriate steps to ensure those students adequately progress in acquiring content knowledge.

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 an 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 effectively in the mainstream educational environment. That is, they should be able to keep up with their non-EL peers academically and participate effectively 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.

According to the XXXX and the XXXX, the District utilizes the state-approved Assessing Comprehension and Communication in English State-to-State for English Language Learners (ACCESS) exam. Both confirmed administration of the ACCESS exam and explained that a student must score proficient (five or above) on each of the four language domains to exit the EL program. Other school administrators also identified proficiency on all four domains of the ACCESS exam as the standard for exiting. The District's ESOL webpage likewise identifies the ACCESS exam as the language proficiency exam to be administered on an annual basis to monitor the progress of EL students.

Unlike the webpage notice and statements corroborating administration of the ACCESS exam, the ESOL procedures from February 2013 provide that exiting a student is based on the following: English Language Development Assessment (ELDA) with a score of 5 (proficient in composite score); conferences with regular classroom teachers, observation of student's interaction with peers, teachers, and other school personnel, report cards, school-wide assessments, state assessments, and informal class assessments. The procedures do not specify the weight afforded to any of these factors or whether a standard for any one element must be satisfied to exit a student. And the procedures are inconsistent with the practices outlined by District and school staff. While OCR recognizes that these procedures pre-date adoption of the ACCESS exam, the procedures for considering the assessment also differ in that a composite score would suffice, whereas staff interviewed by OCR asserted that a student must achieve proficiency in each language domain on the ACCESS test.

The District ESOL procedures also place limitations on which students may exit the EL program. Under the ESOL procedures, a student must test proficient for two years consecutively on the proficiency assessment to exit and students in the first and second grade must pass the third-grade ELDA to exit. Consistent with the February 2013 ESOL procedures, the District provided teacher evaluation forms, which according to the procedures are to be completed by the EL students' teacher after the EL student exits the program.

The lack of clear and consistent exiting procedures raised a preliminary concern as to whether all EL students are exited from the EL program only after they demonstrate English proficiency on a valid and reliable assessment.

The District's ESOL Procedures provide for a student to be monitored and tested with the English Language Development Assessment until the student achieves a score of five for two consecutive years. The ESOL procedures identify the ESOL teacher as the staff member tasked

with monitoring exited EL students by completing a two-year study using a test-view database to compare the student's ELDA, MAP, and PASS scores for two years. Additionally, the procedures specify a follow-up review within the first ten days of schools to ensure the student can function academically and socially in the new setting and periodic monitoring for two years, including a conference between a designated staff member and the student's classroom teacher about the student's success in adjusting academically, whether the student continues to display that they meet the criteria, and identification of any academic or other needs. In addition to the conference, monitoring of progress may also include review of grades, assessment results, work samples, interviews of the student, and interview of parents/guardians. The procedures further require the student's general education teacher and EL teacher to complete quarterly progress reports of exited EL students for two years and consider attendance, teacher observation, and standardized test scores to conclude whether any lack of progress is due to language proficiency. The procedures are silent as to whether the scores are to be compared to the student's prior scores, the scores of non-EL students, or another comparison group.

As far as the implementation of the District's monitoring procedures, the District recently instituted a more formal process for monitoring former EL students and school staff demonstrated a general awareness of the time period for monitoring exited EL students. A number of teachers and staff members told OCR that they are aware of the requirement to monitor EL students for two years after they have exited the EL program. For example, XXXX principal stated that an EL teacher oversees two years of monitoring for exited EL students and a XXXX asserted that exited EL students are monitored for two years. Classroom teachers also confirmed the two-year monitoring period for EL students. The XXXX teacher and other District staff explained that the District monitors exited EL students by completing monitoring forms. According to XXXX teacher, the District recently adopted the monitoring form as a way to add structure and formalize the monitoring of EL students. The form includes reports and benchmarks from District assessments. The XXXX teacher added that exited EL students are monitored through progress reports, assessments, teacher notes and conferences between the EL teacher and general education teacher, as well as conferences between the teachers and parents/guardians of EL students.

Although staff confirmed the two-year monitoring period and some staff showed awareness of the new form for monitoring exited EL students, some school staff members were not aware of any monitoring procedures. For instance, the principal of XXXX stated that he did not know what was done to monitor the progress of exited EL students. Similarly, the XXXX principal did not identify a monitoring system for exited EL students, instead explaining that the school's monitoring system for EL students was the same system used to monitor all students in order to identify those that are struggling. The principal went on to clarify that the school updates a list of students in danger of failing every four to five weeks, and if an EL student appears on the list, the school would notify the XXXX teacher. As with these two principals, three teachers were unfamiliar with the new monitoring form.

In its initial data production, the District provided monitoring documentation for an exited EL student. The District gathered the following documentation in monitoring the exited EL student: class schedule; permission to exit the EL program form; "English as a Second Language Evaluation of Classroom Performance" form; MAP and ELDA test scores; LEP student profile

form; and transcripts, including a percentile score comparing the student's grades to peers. The District provided permission to exit, LEP student profile, and classroom evaluation forms that are blank, with the exception of the student's name and demographic information completed at the top of the forms. Because these forms were not completed, it is unclear whether the classroom teacher completed the evaluation forms or otherwise documented the student's progress after exiting and whether any staff member tracked the various data points (*e.g.*, assessment scores and grades) to ensure that the student was progressing academically after exiting.

In a supplemental data response, the District provided an updated post-exit EL monitoring form with the following information to be completed by the exited EL student's classroom teacher: ACCESS and state assessment scores; description of any additional services offered to the student; report card results, teacher ratings on a five-point scale on study habits, communication, behavior, and language proficiency in language arts, math, science, and social studies; an indication of whether EL strategies have been implemented; a description of any collaboration to address language needs of a former EL; and an option to recommend reclassification. Along with the blank monitoring form, the District provided two completed monitoring forms, which, though generally completed, included responses that were incomplete or inconsistent with the form procedures. For examples, on one form, the teacher completing the form wrote that no language assistance strategies have been implemented, yet does not recommend the student for reclassification. The produced forms, although indicative of processes instituted to monitor exited EL students, raise concerns about whether they are implemented in the manner necessary to ensure that exited EL students struggling to access the program because of language proficiency are identified and receive any necessary EL services.

In addition to the monitoring forms for these two students, the District provided the student file of an exited EL student. The file contains a post-exiting monitoring form for the XXXX school year completed by the student's classroom teacher. On the form, the classroom teacher lists the student's ACCESS scores, state assessment results, rates the student on a variety of measures for the first three quarters, confirms implementation of EL strategies, and indicates that it is not necessary to consider the student for reclassification. Again, as with other monitoring forms provided by the District, this student file supports the EL teacher's assertion of a more formalized process for monitoring but also confirms some of the implementation concerns from interviews with teachers.

OCR's investigation raises concerns about the District's monitoring of students once they exit the program. Specifically, OCR has concerns regarding in-program monitoring of EL students, the inconsistent understanding among staff responsible for the EL student population as to the process by which exited students are monitored.

EL Students Opted Out of EL Services

Although parents have a right to decline or opt their children out of a district's EL program or particular EL services, a parent's decision to opt their child out of an EL program must be knowing and voluntary, and a school district may not recommend parents decline all or some EL services within an EL program for any reason. To ensure a parent knowingly and voluntarily

declines services, a school district must provide guidance in a language parents can understand to ensure parents understand their child’s rights, the range of EL services the child could receive, and the benefits of such services. After a parent opts their child out of the EL program, the student retains their EL status and school districts must periodically monitor the progress of students who have been opted out and inform parents of the continued availability of EL services if the student does not demonstrate growth in English proficiency or struggles in one or more subjects due to language barriers. If the student’s struggles persist and the parent continues to decline EL services, the school district should take affirmative and appropriate steps to meet its civil rights obligations.

The District provided to OCR a Waiver of ESOL Instructional Services form to be completed by parents/guardians who decide to opt their child out of EL services. The form indicates the availability of EL services for students identified as EL students, sets out the goal of the EL program (“to enable students to become fully functional in English and to perform successfully at school”), and cautions parents that students will still be required to participate in annual ACCESS testing. The form does not include a description of the EL services available to the student.

The District also identified the XXXX teacher as the staff member responsible for managing the opt-out process. After confirming this responsibility, the XXXX teacher noted that only pull-out services would cease if a parent opted their child out, the student would still be tested with the ACCESS annually and classroom teachers would continue to offer supports. As far as the processing for opting students out, the XXXX teacher identified the waiver form as the only information the District would provide when a parent considers opting their child out of EL services. She added that no parent has expressed an interest in opting their child out of EL services, and that a parent would never be encouraged to opt their child out of EL services.

While the District has not recently experienced a parent opting an EL student out of EL services, the lack of full information – in particular information concerning the nature of services available to students in the EL program – provided to parents in the waiver form and the lack of clear processes to monitor the progress of EL students generally, and opted out students specifically, raised a concern.

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 courses.

In its “Equal Access to All District Programs and Services” document, the District outlines the admission requirements and describes the model for its gifted and talented program for students in grades three through twelve. In grades three to five, the District provides pull-out instruction to gifted and talented students by a teacher endorsed as a gifted and talented teacher by the South Carolina Department of Education⁷. The District asserts that instructors utilize advanced interdisciplinary units based on the Common Core State Standards for pull-out instruction. Starting in sixth grade, the District groups gifted students in special classes around one content area: in grades six to eight students are grouped together for math and ninth through twelfth graders who have been identified as gifted receive English instruction together. The District also offers an honors chorus program to twelfth graders at Dillon High School.

The District considers three dimensions established by the state for students to qualify as gifted: reasoning, achievement, and intellectual performance. In order to be eligible, a student must meet the criteria in at least two of three dimensions. Under the reasoning dimension, a student may be placed into the gifted program on the basis of aptitude alone if they score ninety-six or higher in percentile rank on the composite/total score of a nationally normed aptitude test. If the student scores below a ninety-six but scores a ninety-three or higher in national age percentile rank, the student is eligible for placement. For the achievement dimension, a student may be eligible if they score a ninety-four or higher on an approved achievement test or if one of their scale scores from the South Carolina assessment program in English or math exceeds a threshold score established each year. In the third dimension, intellectual performance, a student may be eligible for placement if they meet verbal or non-verbal criteria on performance tasks or through the use of end-of-year grade point averages in grades five through eight.

According to the District’s gifted and talented coordinator, the three-dimension guidelines are set by the South Carolina Department of Education, and the District has little flexibility to revise the identification process. OCR reviewed the South Carolina gifted and talented regulation and the best practices manual issued in 2006. As asserted by the gifted and talented coordinator, the District’s guidelines match the South Carolina regulations and identification requirements outlined in the best practices manual.

While generally consistent with South Carolina requirements, the District’s process for identifying gifted and talented students raises two preliminary concerns. The District did not offer any documentation or an explanation of how the gifted and talented programs are made available to EL students, as requested in OCR’s data request. When asked about the potential for language barriers to prevent EL student participation, the coordinator of the gifted and talented program repeatedly recognized that language would prevent the brightest of EL students from being admitted to the program and noted that it is rare for a non-exited EL student to be admitted to the gifted and talented program. While recognizing these language barriers, the coordinator did not identify any consideration given to whether the language proficiency of EL students prevents them from participating in the gifted and talented program, when asked to identify any

⁷ A teacher must either be endorsed as a gifted and talented teacher by the South Carolina Department of Education or must be working towards gifted and talented endorsement by taking specific coursework relating to the needs of gifted and talented learners and differentiated instruction.

ways in which language proficiency is considered.⁸ This omission, coupled with the Director’s recognition of unaddressed language barriers in screening, raised a concern over the District’s efforts to ensure that language proficiency does not prevent EL students from participating in the EL program.

For the ninth grade honors chorus program, students are identified through state-regulated auditions and teacher recommendations. According to the District’s equal access document, three music professionals use state rubrics to judge students on their vocal talents. Teachers also rate the students’ artistic traits and personal qualities on a teacher recommendation form.

The District provided to OCR a list of all EL students participating in the gifted and talented programs during the 2015-2016 school year. During the 2015-2016 school year, there were 13 EL students in the academic gifted and talented program out of the 247 total EL students in the District. In other words, 5.3% of the EL students in the District participate in the gifted and talented program. The District’s list, which is sorted by school and program type, identifies one EL student in the gifted artistic program and thirteen EL students in the gifted and talented academic program. At the start of the 2015-2016 school year, there were 260 non-EL students in the academic gifted and talented program out of the 4,101 (3,854 after subtracting EL students) students in the District, meaning that 6.7% of non-EL students participated in the academic gifted and talented program. In sum, non-EL students participated in the academic gifted and talented program at a slightly higher rate than EL students.

The gifted and talented coordinator’s assertions regarding the ability of EL students in the alternative language program to access the gifted and talented program, along with the low number of EL students enrolled in the gifted program raised a concern as to whether the District’s gifted program evaluation and testing procedures screen out EL students because of their limited English proficiency and whether the District monitors the extent to which EL students participate in gifted and talented education programs.

i. 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.

⁸ OCR notes that, with respect to translation services, the gifted and talented coordinator acknowledged that the District does not translate any information about the identification process, including the specifics regarding assessments, follow-up communications about further testing if a student meets one dimension, and parent consent forms. [District G&T coordinator, #1265425, p. 3] This evidence further supports the finding of a violation as to the interpretation and translation services provided to LEP parents outlined below.

According to the District's exceptional children's coordinator (EC Coordinator), the District carries out the same process for evaluating students for special education services for EL students and non-EL students. For both EL and non-EL students, the District has a formal referral process and permits a parent to initiate the evaluation process through an oral statement to a teacher. The District distributes child-find documents in different languages and announces the process in television commercials and through local civic organizations. According to the EC Coordinator, the timeline for evaluation is also the same for EL and non-EL students. What may differ is that the coordinator will arrange for interpretation services if necessary for evaluation or secure a school psychologist who speaks the student's language to conduct the evaluation. The District hired XXXX school psychologists for the 2015-2016 school year, and the two school psychologists stated that, if asked to evaluate an EL student, they would contract with a third party to evaluate students of lower English language proficiency. In addition to these considerations in evaluation, the XXXX stated that a staff member who provides EL services to the student will typically be present at the Individualized Education Plan meeting.

District teachers and administrators confirmed the EC Coordinator's assertions relating to the identification and evaluation of EL students. Two special education teachers, one at XXXX and another at XXXX, stated that the process of identification and evaluation would be the same for EL students as it is for non-EL student and that a student's language background would be accounted for in the evaluation process. A special education teacher at XXXX confirmed the availability of special education services and that the same processes apply to EL students and non-EL students.

While District administrators, staff, and the XXXX school psychologist generally described processes for accounting for EL students' language background in evaluation, the XXXX school psychologists XXXX, neither has evaluated an EL student for special education services, and the description offered by the psychologists lacked specificity. For example, a school psychologist said that she would contract out for the evaluation of EL students who were not proficient in English, while she would proceed with the evaluation for students deemed proficient. When asked how she assessed proficiency, the school psychologist indicated that she would confer with the interpreter and XXXX teacher who use ACCESS scores to gauge proficiency. She did not identify a benchmark score for proficiency as it relates to the need for language background consideration in special education evaluation or what role the District's interpreter, who has no responsibilities related to ACCESS, would play in assessing proficiency. After further probing about potential special education evaluation of EL students at levels 3-5, a school psychologist stated that she would conduct the assessments if she felt comfortable, adding that she may add a Woodcock-Johnson assessment in the evaluation to compare English results to those in the student's other language.⁹

The District currently provides special education services to XXXX EL students. OCR's review of student files found that at times forms were left completely blank, including retention/promotion forms. In one instance, the only information provided was a handwritten notation that the student was moving to a self-contained classroom. This same student's HLS noted that the language spoken by the student and in the home was XXXX. However, the most

⁹ The Woodcock-Johnson tests of oral language battery permits examiners to assess the relation of language ability to cognitive ability and academic achievement in both English and Spanish.

recent IEP was provided in English, with at least one form provided in XXXX and a summary of the IEP notes provided in English with the headings translated into XXXX. While this raises concerns related to the parent communication issues raised above, it also calls into question the District's ability to involve the student's parent in the SPED evaluation, accommodation, and implementation process, which is particularly important for this student who is in XXXX. In a separate student file reviewed by OCR, the IEP notes indicate that the IEP meeting was interpreted by the student, who is both an EL and a student with a learning disability, because the interpreter was unavailable. Here again, the communication issues described above raised concerns with the parent's ability to participate in the process of implementing a student's special education services.

While the files reviewed by OCR raised concerns relating to adequacy of the District communications with LEP parents that are more fully addressed in the parent communication section below, OCR did not identify concerns relating to the exclusion of EL students from receipt of special education services (through a no-dual services policy) or concerns regarding the failure to account for a student's language background. OCR noted a concern regarding the District's failure to take into account a student's language background in its evaluation of students for special education services. Although, as described above, the new school psychologists stated that they would theoretically contract with third parties to conduct EL student evaluations, the school psychologists lack any experience evaluating EL students (or deciding when to contract out for those evaluations), did not describe a clear process by which they would decide when it would be necessary to contract out, and the District did not provide policies to which the school psychologists could refer. Prior to the conclusion of OCR's investigation into this issue, the District expressed interest in resolving the review pursuant to Section 302 of OCR's *CPM* and OCR determined that it was appropriate to do so. Therefore, OCR did not make a compliance determination as to the adequacy of the District's consideration of EL students' language background in special education services evaluations and any concerns will be addressed through the implementation of the attached resolution agreement.

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.

According to the EL teacher and teachers at various schools in the District, the segregation of EL students is limited to the twice weekly pull-out sessions in which the EL teachers provide small-group ESL instruction to EL students at lower proficiency levels. EL students receiving pull-out services are pulled from their regular classroom for forty-five minutes twice a week. At least four classroom teachers indicated that pull-out services are scheduled for times causing the least disruption to the EL student's educational services and clarified that students are not separated from their non-EL peers for art, music, or recess, with one teacher specifying that EL students are typically pulled out of her classroom during small-group instruction periods. While confirming that EL students attend these classes and lunch with their non-EL classmates, the EL teacher added that, outside of pull-out periods, EL students would only be apart from their peers

if an intervention teacher was providing small-group instruction in the back of the classroom; EL students are not separated for recess or lunch.

Because the majority of the EL service provision and instruction happens in the context of the general education classroom, and students are only pulled out of the general education classroom for two forty-five minute periods each week at the most, and numerous staff confirmed that EL students attend subjects like art and music, as well as lunch and recess, with non-EL students, OCR has not identified any concerns of unnecessary segregation of EL students by the District.

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 non-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 EL teacher and the District, in its data response, identified a needs assessment survey and federal stakeholders meetings as the methods for evaluating the District's EL program. The needs assessment survey, which is distributed to stakeholders in Title I, Title II, and Title III programs, asks respondents to identify the programs or intervention they consider the most important, prioritize areas of instruction, suggest approaches to improving parent involvement, list areas of concern and highlights in the District's educational program, and offer suggestions for improvement. The resulting data include a tally of the votes for important areas and individual responses. Along with the needs assessment, the District produced meeting minutes from a Title I, Title III, and school improvement committee meeting in which the members present reviewed the survey response totals. While the needs identified in the survey or discussed during the meetings could potentially relate to the provision of services to EL student, the data from the survey and meetings do not provide any indication of whether the District's alternative language program is succeeding in overcoming language barriers within a reasonable period of time.

Based on its investigation, OCR determined that there was sufficient evidence to conclude that the District has not periodically evaluated its EL program and that the District otherwise failed to provide sufficient documentation to demonstrate that its implemented alternative language program is successful – *i.e.*, that EL students in the program are overcoming language barriers sufficiently well and sufficiently promptly to participate meaningfully in the District's educational program. Therefore, OCR concluded that there is sufficient evidence that the District is in violation of the regulation implementing Title VI for its failure to evaluate its alternative language program.

C. 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. The 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.

Some staff asserted that limited English proficient (LEP) parents are identified through the home language survey (HLS). Specifically, staff pointed to the question regarding the student's home language. This assertion is supported by the note on the HLS indicating that all calls home from the school will be in the language indicated. But staff was not consistent in describing this as the method of identification and certain staff described other methods of identifying LEP parents. In fact, in an interview with the principal at XXXX OCR learned that the principal at times identifies LEP parents based on their appearance.

The District asserted that it employs one part-time Spanish language interpreter who splits her time among all the schools in the District and is available by telephone if needed outside of regular hours. The District's response also noted that students and friends of family members are permitted to serve as interpreters any time the District's interpreter is not available. Interviews with staff at schools across the District revealed that the District's interpretation and translation services depend heavily on the use of untrained students and family members for communication of critical information to LEP parents. A staff member told OCR that it is common for the school to rely on students for interpretation, detailing one instance in which a XXXX student interpreted for LEP parents. The principal at XXXX confirmed that this was the practice for providing interpretation services when the District's interpreter was unavailable. The same information was provided by staff at many of the other District schools. One XXXX noted that she often uses students as interpreters when she needs to discuss important information with LEP parents. At least one staff member explained that providing adequate translation and interpretation services to LEP parents is a big challenge because there is only one part-time LEP Parent Liaison for the entire District.

OCR noted that the District's EL population includes students who speak languages other than Spanish. Staff at a number of schools noted that those students are often used to interpret when communication between their parents and school staff takes place. Specifically, one teacher at XXXX noted that she uses XXXX students as interpreters when she needs to speak with their parents. Similarly, OCR learned from XXXX office staff that they will typically first attempt to communicate with LEP parents through the student and only contact the interpreter if they feel they are not getting the information across through the child. This school's principal acknowledged that students often serve as interpreters in discussions about student discipline, scheduling, and academics and the principal noted that they were at times unsure as to the accuracy of the students' interpretation.

As it relates to translation services, the District asserted that it will sometimes rely on Google Translate for translations. A XXXX principal told OCR that school level translations are

typically done through Google Translate, but that there is nobody available to verify the accuracy of those translations. This lack of verification of Google translate was confirmed by the District's interpreter/translator, who recalled a situation in which a third-grade student assisted in reviewing a Google translation. The District's part-time interpreter/translator added that it will often take her more time to correct a Google-translated document than it would to translate the document from English.

Even with the use of Google Translate without verification to translate documents, the District fails to routinely provide translation of vital information. At XXXX, staff told OCR that the school routinely translates newsletters, handbooks, and memos about holidays and school events. None of the staff interviewed by OCR, at any of the schools visited in the District, acknowledged translation of IEP meeting notes, education plans, report cards, parent-teacher conference documents, among other vital information. It was also unclear from OCR's interviews how LEP parents are made aware of the availability of interpretation and translation services and the need to request them through the use of the binders located at the front desk.

OCR's investigation found that the District routinely relies on students to act as translators and interpreters for their LEP parents. The District does not have a plan to provide adequate, qualified interpretation and translation services to LEP parents, in particular to those parents who speak languages other than Spanish. District staff noted the challenges faced by schools in providing adequate interpretation even to Spanish-speaking LEP parents due to the fact that the District employs only one part-time interpreter. Additionally, OCR found that the District's use of Google Translate without verification for translations, and the failure to routinely translate vital documents (including, IEP forms), results in a failure to adequately communicate critical information to LEP parents. Therefore, OCR finds the District out of compliance with its responsibilities under Title VI to communicate effectively with LEP parents/guardians. OCR also has concerns that the District is using inappropriate information to identify individuals with language needs. Specifically, OCR is concerned that at least one principal has used appearance as a means for identifying individuals as LEP.

Conclusion

On December 16, 2016, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. 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; and
- Ensure that EL students have an equal opportunity to participate in gifted and talented, advanced placement, or other specialized programs.

OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues raised. As stated in the Agreement entered into by the District on December 16, 2016, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including 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, including 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 should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's full cooperation throughout the course of the investigation in the resolution of this complaint. If you have any questions regarding this letter, please contact Marcelo Quiñones or Sebastian Amar, the OCR attorneys assigned to this complaint, at 202-453-6567 or marcelo.quinones@ed.gov, or at 202-453-6023 or sebastian.amar@ed.gov, respectively.

Sincerely,

/s/

Alice Wender
Director
Office for Civil Rights
District of Columbia Office

Enclosure