



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION XV  
MICHIGAN  
OHIO

September 4, 2018

Diane M. Lease, Esq.  
Chief Legal Counsel  
Ohio Department of Education  
25 South Front Street, MS 707  
Columbus, Ohio 43215-4183

Re: OCR Docket #15-15-1148

Dear Ms. Lease:

This letter is to notify you of the disposition of the above-referenced complaint filed on February 9, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Ohio Department of Education (ODE), alleging that ODE discriminated against an English language learner (ELL) student (the Student) based on national origin. Specifically, the complaint alleged that in XXXXXXXXXX ODE required the Student to take the Ohio Graduation Tests (OGTs) in English even though he had not passed the Ohio Test of English Language Acquisition (OTELA).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities that receive Federal financial assistance from the Department. ODE is a recipient of Federal financial assistance from the Department and is therefore subject to Title VI. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following legal issues: whether ODE, directly or through contractual or other arrangements, on the ground of national origin, excluded persons from participation in its programs, denied them any service or benefits of its programs, or provided them any service or benefit which was different or provided in a different manner from that provided to others, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b)(i)-(ii); or, in determining the type of services or benefits to be provided, utilized criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their national origin, in violation of 34 C.F.R. § 100.3(b)(2).

During its investigation, OCR interviewed the Student and his former XXXXX teacher from the school district he attended for high school. OCR also interviewed ODE staff. OCR also reviewed documents ODE provided and documents and information available on ODE's website, including ODE policy documents. OCR also reviewed documents available on the Department's

website, as well as certain Ohio laws and regulations and other publicly-available information. Finally, OCR obtained documents from the Student's former school district. Based on its investigation, OCR determined that ODE discriminated against the Student on the basis of national origin. OCR explains the bases for its finding below.

### **Summary of OCR's Investigation**

- **Ohio Graduation Tests (OGTs) and Testing Accommodations for ELL Students**

In order for high school seniors to receive a diploma at the end of the 2014-2015 school year, ODE required students to meet both testing requirements and curriculum requirements. To satisfy the curriculum requirements, students had to earn 20 credits in required content areas – reading and writing, health, mathematics, physical education, science, social studies, fine arts, economics, and financial literacy - and take a certain number of electives. Students also had to achieve a score of proficient or higher on all five sections of the Ohio Graduation Test (OGT) (reading, writing, mathematics, science, and social studies) (collectively, the “OGTs”).

ODE states in its OGT Guide that the OGTs “are a key part of Ohio’s education reform to establish an aligned system of standards, assessments and accountability for Ohio schools.” It also states that the OGTs measure the level of reading, mathematics, writing, science, and social studies skills expected of students by the end of the 10th grade. Additionally, the OGT Guide states that the Ohio General Assembly established the testing requirements in 2001 and that the graduating class of 2007 was the first class responsible for taking and passing the OGTs.

Related to the reading OGT, the OGT Guide states that the reading OGT consists of 32 multiple-choice, 4 short-answer, and 2 extended-response test questions, to test four academic content standards: acquisition of vocabulary, informational, technical and persuasive text, “concepts of print, comprehension strategies and self-monitoring strategies,” and literary text. The OGT Guide provides an overview of concepts and skills assessed by each of the four academic content standards. For the first standard of acquisition of vocabulary, students must apply word analysis skills to build and extend vocabulary and recognize the importance of figurative language and the meaning it conveys. The second reading content standard is “informational, technical and persuasive text,” which requires students to analyze text structures and draw inferences from them and recognize arguments, bias, stereotyping, and propaganda in informational text sources. The third reading content standard is “concepts of print, comprehension strategies and self-monitoring strategies,” which requires students to apply reading comprehension strategies to understand grade-appropriate text and analyze and evaluate reading materials to demonstrate understanding of text. The fourth reading content standard is literary text, for which students must analyze and critique literary text to achieve deep understanding and analyze an author’s use of literary techniques to shape plot, set meaning, and develop tone.

Regarding the writing OGT, the Guide states that the test contains 10 multiple-choice questions, 1 short-answer question, and 2 writing prompts that measure student achievement related to three academic content standards: the writing process, applications, and conventions. The Guide further states that the writing OGT assesses a student’s ability to engage in the processes of writing, to write in different styles or forms, and to use English writing conventions. The

assessment “measures the purposefulness and organization of a student’s writing. It also measures effective grammatical choices and a student’s understanding of how to revise and edit.” The Guide also states that the social studies OGT contains 32 multiple-choice, 4 short-answer, and 2 extended-response test questions that measure student achievement related to the seven academic content standards. The Guide states that the OGT covers world studies from 1750 to the present and United States studies from 1877 to the present and that many test questions present data and information in text, tables, charts, graphs, maps, and illustrations. The content standards are: history; people in societies; geography; economics; government; citizenship rights and responsibilities; and social studies skills and methods. For social studies skills and methods, students must be able to examine sources of information to determine if they are reliable and credible and show how to use evidence to support or refute a position on an issue.

The Guide states that the science OGT contains 32 multiple-choice, 4 short-answer, and 2 extended-response test questions that measure student achievement related to the six academic content standards. The content standards are: earth and space sciences; life sciences; physical sciences; science and technology; scientific inquiry; and scientific ways of knowing. The Guide states that:

OGT science questions are designed to present data and information in a variety of formats, including text, data, tables, graphs, diagrams, maps, and drawings. To ensure a variety of ways for students to demonstrate science skills and understanding, each OGT question for science will focus on one of four categories: 1) recalling and identifying valid science information and principles; 2) communicating science concepts and analyses of science data; 3) using scientific inquiry and technology design; 4) applying science concepts and ways of knowing.

The Guide states that the math OGT contains 32 multiple-choice questions, 5 short-answer questions, and 1 extended-response test question that measure student achievement related to six academic content standards. The content standards are: number, number sense and operations; measurement; geometry and spatial sense; patterns, functions and algebra; data analysis and probability; and mathematical processes.

ODE did not exempt ELL students, who were not proficient in English, from these graduation requirements; the OGT Guide states that ELL students had to achieve passing scores on the OGTs in order to be awarded a diploma. ODE publishes a Rules Book for its statewide assessment program. The Rules Book dated September 26, 2014, which was the version in effect when the Student took the OGTs (the 2014 Rules Book), defined ELL students, in part, as individuals who have such difficulty speaking, reading, writing, or understanding English that they may be unable to perform well enough in class or on state tests to meet expected state standards for achievement. To determine a student’s proficiency in English, during the 2014-2015 school year, Ohio used the OTELA. The OTELA consisted of tests

aligned with Ohio’s English language proficiency standards and were constructed to provide content coverage across four academic topic areas (English Language

Arts; Mathematics, Science and Technology; and Social Studies), and one non-academic topic area, School-Environmental.

Thus, the OTELA measured a student's level of proficiency in English used in the four subject matter areas tested in the OGTs. ODE identifies 5 stages of second language acquisition: pre-functional; beginner; high beginner; intermediate; and advanced. ODE states that it can take students 4 to 10 years to reach the advanced stage.

ODE states that there are two types of language, social and academic. ODE has a description of the two types of language on its website. The two types of language are described as:

**BICS - Basic Interpersonal Communicative Skills**

This is social language and develops in 1 – 3 years. This is the day-to-day language needed to interact with other people. ELLs use BICS on the playground, in the cafeteria, on the bus. This language is context based.

**CALP – Cognitive Academic Language Proficiency**

This is academic language and takes 5- 7 years to develop. There are general academic words and content specific words.

OCR also reviewed ODE's web page titled "Myths about Second Language Learning," which states that it can take 6 to 9 years for ELL students to achieve the same levels of proficiency in academic English as native speakers. The OGTs are written in academic English.

Although ODE does not exempt ELL students from the OGTs, ODE does allow certain accommodations for ELL students. The 2014 Rules Book stated that all ELL students could use a dictionary and be given extended time to complete the OGTs. Regarding the dictionary, the 2014 Rules Book stated:

Students identified as ELL may use a hand-held electronic or printed/paper dictionary on the OAA or OGT. A computer dictionary may not be used. The type of dictionary used is the district's choice (translation, word-to-word, bilingual, standard, etc.). The dictionary should be the same type used as an instructional accommodation in the classroom. The department recommends the use of a word-to-word dictionary.

In addition to the use of a dictionary and extended time, ODE also allowed other accommodations for certain ELL students. ODE's 2014 Rules Book stated that ELL students who had been enrolled in U.S. schools for less than three years and were at the "beginning" or "intermediate" level in both reading and writing (as measured by the most recent English language proficiency test) were eligible to receive a read-aloud accommodation or special test formats on the OGTs. For the read-aloud accommodation, someone reads allowable portions of the test aloud in English to the student. The 2014 Rules Book identified three ways in which special test formats could be provided – through an English audio CD, through a foreign-language CD (only available in Spanish, Arabic, or Mandarin Chinese), or through someone reading a language translation script (i.e., a translator reads aloud in the student's language). The

2014 Rules Book stated that ODE “strongly recommends the use of the English audio CD as it provides a standardized reading of allowable parts of the test forms.” However, the 2014 Rules Book also stated that ODE “believes that the instructional staff who work [ ] with the ELLs are in the best position to make judgments about which allowable accommodations are appropriate for these students.”

Even though ODE allowed these additional accommodations for certain ELL students, not all of these accommodations were available for every administration of the OGT throughout the year. ODE creates three different versions of the OGTs to be administered at three different times during a school year – fall, spring, and summer. The foreign language CD and English audio CD were only available for the fall and spring administrations of the OGT and were not available during the summer administration. In addition, while the test contractor reimbursed school districts for a translator to read the language translation script for the spring OGT administration (at the rate of \$100 per test per student)(only for languages not available on CD), school districts had to bear this expense during the fall and summer test administrations. ODE staff interviewed by OCR stated that not all accommodations were available on every test administration because these accommodations are expensive. ODE stated that the accommodations were made available at no cost to districts during the spring administration because this is when the largest number of students would take the OGTs.

OCR notes that even when ODE allowed portions of the OGTs to be translated into a student’s native language, not every portion of all tests was translated. For example, the 2014 Rules Book stated that reading passages on the reading OGT were not allowed to be translated into the student’s native language. In addition, the student’s answers on the writing OGT had to be written in English. OCR reviewed a language translation script for the fall 2014 administration of the OGT. OCR’s review showed that, for the reading OGT, the translator was allowed to translate most questions and answer choices, but certain key words, phrases and sentences in some of the questions and answer choices were not allowed to be translated. In addition, for the writing OGT, not all writing questions were allowed to be translated; some multiple-choice questions and answer choices were allowed to be translated, but some other multiple-choice answers and small paragraphs incorporated into some questions were not allowed to be translated. For the social studies OGT, while almost all of the questions and answers could be translated for the student, certain key phrases (e.g., “Great Depression,” “World War II”) and small paragraphs incorporated into some questions were not allowed to be translated. Finally, for the math and science OGTs, all questions and answer choices were allowed to be translated. In addition, upon student request, translators could translate any text, including equations, within a table, figure, picture, graphic or chart for the math OGT and any text within a table, figure, picture, graphic, or chart for the science OGT.

When OCR asked ODE staff for information concerning ODE’s rationale for the three-year cut-off for ELL students for accommodations on the OGTs other than the use of a dictionary and extended time, ODE stated that it had used “anecdotal evidence” in creating its three-year rule. ODE explained that it talks to teachers, and that, based on those conversations, ODE believed that students who had attended U.S. schools for three years or more could do well on the OGTs with only extended time and a dictionary. ODE staff stated that, while nationally recognized scholarship shows that students require 5-7 years to gain proficiency in academic English, their

anecdotal evidence led them to believe that 3 years was sufficient. ODE staff also stated their belief that allowing additional accommodations for more than 3 years would result in teachers not being held accountable. ODE staff stated that they did not make any exceptions to the three-year rule based on an assessment of individual students' level of English proficiency.

ODE asserted two additional rationales for its three-year rule. The first was that the No Child Left Behind Act (NCLB) contained this three-year rule. ODE pointed to a specific provision in NCLB. OCR also reviewed the preceding subclause, at 20 U.S.C. § 6311(b)(3)(C)(ix)(III), to the specific provision referenced by ODE. The referenced section dealt with academic assessments and stated that all students should participate in state assessments. Together, these subclauses stated that ELL students should participate in state assessments, but also discussed when accommodations were allowable. NCLB stated that ELL students:

shall be assessed in a valid and reliable manner and provided reasonable accommodations on assessments . . . including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency as determined under paragraph (7); (x) notwithstanding subclause (III), the academic assessment (using tests written in English) of reading or language arts of any student who has attended school in the United States (not including Puerto Rico) for three or more consecutive school years, except that if the local educational agency determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what such student knows and can do, the local educational agency may make a determination to assess such student in the appropriate language other than English for a period that does not exceed two additional consecutive years, provided that such student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what such student knows and can do on tests (written in English) of reading or language arts.

ODE also asserted that the Department's Office of English Language Acquisition and its Office for Elementary and Secondary Education had approved ODE's three-year rule, which ODE included in its proposal on how it would meet certain NCLB requirements. OCR requested a copy of this proposal. ODE provided a copy of documents titled "Ohio ESEA Flexibility Renewal Request" and "Ohio ESEA Flexibility Request" along with copies of the Department's letters approving ODE's renewal requests. OCR's review showed that these documents did not discuss ODE's three-year rule.

In a letter to ODE from the Department dated August 21, 2015, the Department stated the following:

Ohio continues to have an affirmative responsibility to ensure that it and its local educational agencies (LEAs) are in compliance with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and

age in their implementation of ESEA flexibility. These laws include Title VI of the Civil Rights Act of 1964.

OCR looked for other documents approved by the Department regarding this issue. Ohio's approved plan, dated December 6, 2010, was available on the U.S. Department of Education's website. However, OCR was unable to find any discussion of the three-year rule or ELL accommodations in the plan. OCR also found a letter from the Department to ODE titled "Decision Letter on Request to Amend Ohio's Accountability Plan," dated March 22, 2011. The letter stated:

Please also be aware that approval of Ohio's accountability plan for Title I, including the amendment approved herein, does not indicate that the plan complies with Federal civil rights requirements, including Title VI of the Civil Rights Act of 1964.

OCR notes that ODE reported to OCR that, in March 2017, the State Board of Education adopted a Resolution to rescind Ohio Administrative Code § 3301-13-11, which contained the three-year rule for additional ELL accommodations. OCR reviewed the report regarding this rescission, which states that Ohio was required to submit a plan to the Department in spring 2017 providing a framework for how Ohio will implement the Every Student Succeeds Act, including assessing ELL students. The report states that, once the Department approved Ohio's state plan for assessing and accommodating ELL students, ODE staff would present an updated rule for review and consideration. Thus, the three-year rule was to no longer be in effect.

However, ODE issued a new Rules Book for state tests, dated September 29, 2017 (the 2017 Rules Book). The 2017 Rules Book still contains the three-year rule. Specifically, it states:

A student/adult who was never exited from the English as a Second Language (ESL) program, has left school, may or may not be enrolled and has not passed all the OGT may continue to take the OGT with the EL accommodations that are appropriate: use of a dictionary and have extended time within the same day the test started. If the EL has been in U.S. schools for less than three years, the EL may have a read aloud in English or in the EL's native language.

With respect to the other relevant provisions in the Rules Book concerning ELL student participation in the OGTs, the 2017 Rules Book is similar to the 2014 Rules Book described above, with the following exceptions:

- The 2017 Rules Book states that ELL students who enrolled in 9<sup>th</sup> grade before July 1, 2014, must either pass all 5 OGTs and meet all curricular requirements or meet the criteria for Alternate Pathway or the Options for Graduation in order to receive a high school diploma.
- The 2017 Rules Book clarifies the allowable read-aloud/translation actions for ELL students in U.S. schools for less than 3 years. Specifically, it states that, for the reading OGT, reading passages cannot be read aloud in any language, although questions can be read aloud, and students may respond in English or their native language. For the writing

OGT, the entire test can be read in English or the student’s native language, but the student’s responses must be written in English only. For the math, science, and social studies OGTs, the entire test may be read in English or the student’s native language, and students may respond in English or their native language.

The 2017 Rules Book stated that for the 2017-2018 school year, the languages in which OGT CDs were available for the fall and spring administrations were Spanish, Arabic, and Mandarin Chinese.<sup>1</sup>

OCR also reviewed Ohio’s plan regarding how it would comply with the Every Student Succeeds Act (ESSA), which ODE submitted to the Department on September 18, 2017. OCR’s review of the plan showed that it does not discuss any three-year-rule in providing ELL accommodations. The plan states that Ohio is required to provide its definition for “languages other than English that are present to a significant extent in the participating student population,” and identify the specific languages that meet that definition. The plan states that:

Ohio defines significant languages other than English as those that include at least 20 percent of the state’s English learner (EL) student population. Spanish has been identified as meeting this definition. Somali, Arabic and Chinese currently include approximately 5 percent each of the state’s languages other than English present in the EL school population.

...

Ohio attempts to meet the needs of English learner students by making available native language options, as follows:

...

- Districts are required to provide, to the extent practicable, translation accommodations for ELs taking the compulsory state assessments. For example, [ODE] provides reimbursement to districts for translation services. Information on translators is provided in the Ohio’s State Tests Rules Book and Ohio’s Accessibility Manual.

- Ohio does not permit the English language arts tests to be administered in any language other than English, except in very specific situations for students with disabilities. Along with the state’s computer-embedded accessibility features, English learners are allowed extra time and the use of an approved bilingual, word-to-word dictionary to demonstrate what they know and can do, as described in Ohio’s Accessibility Manual.

The plan notes that Ohio students speak 81 languages other than English and that ODE collects information regarding the total number of these students, to assist districts with finding translators for state test translations.

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<sup>1</sup> OCR notes that, in a separate matter, OCR Docket #15-15-1426, during OCR’s investigation ODE provided information indicating that the 5 most common languages for Ohio ELL students were Spanish (14,386 students), Somali (3,414), Arabic (2,974), Chinese (1,006), and Japanese (857). ODE has also reported in that matter that, as of December 28, 2016, the top 8 languages in Ohio were: Somali, ASL, Vietnamese, Spanish, French, Mandarin, Cantonese, and Creole/Haitian.



Regarding the OGTs, the plan notes that:

In previous years, [ODE] provided the state graduation assessment in multiple languages other than English and Spanish (at times, nine languages other than English). The tests were translated and provided on CDs to standardize the translation. [ODE] determined that this was not cost-efficient, as many of the CDs were returned unopened or the test was translated into a language variation not understandable to the students (e.g., Somali May and Somali Benadir). Based upon feedback from stakeholders, [ODE] determined it was more effective to reimburse for translation services provided at the local level by the districts.

On December 19, 2017, the Department issued its interim feedback letter on Ohio’s state plan, which asked for clarifying or additional information to ensure the plan has met all statutory and regulatory requirements. The Department’s letter did not address the issue of assessment accommodations for ELL students, although it did request additional information regarding how Ohio will assess progress in achieving English language proficiency.

According to data compiled by the National Center for Education Statistics, Ohio’s high school graduation rate for ELL students for the 2014-2015 school year was 50%, while the overall state high school graduation rate for that school year was 81%.

- **The Student**

XX – paragraphs redacted – XX

OCR requested that ODE provide a copy of any information explaining how the accommodations available to the Student (i.e., extended time and use of a dictionary) during the 2014-2015 school year ensured that the Student was tested on his proficiency in the core academic content being tested on the OGTs, and not tested solely on his English language proficiency. In response, ODE stated that it had already provided OCR with testing and accommodation resources and guidance, such as the 2014-2015 Rules Book and “Validity Test” for the OGTs.

The 2014-2015 Rules Book was discussed above. ODE did not provide OCR with a document titled “Validity Test.” However, ODE did provide OCR with a document titled “Validity study: A collection of evidence about the Ohio Graduation Tests.” The study states that OGT test items were developed and reviewed in consultation with various committees and that public input was solicited. While the study includes some analysis of estimated reliability and success rates for examinees by gender and race (e.g. American Indian, Asian, Black, Hispanic, White, Multi-racial, and Other), the study does not state that the test items were reviewed by ELL experts to ensure these test items were valid and reliable to test ELL students’ ability and knowledge of the academic content standards being assessed.

### **Applicable Legal Standards, Analysis, and Conclusion**

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, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

The OCR policy memorandum issued on May 25, 1970, *Identification of Discrimination and Denial of Services on the Basis of National Origin* (the May 1970 Memorandum), 35 Fed. Reg. 11,595, articulates OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to ELL students. The May 1970 Memorandum states, in part: "Where the 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, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." The May 1970 Memorandum, as affirmed by the U.S. Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974), continues to provide the legal standards for OCR's Title VI policy concerning discrimination on the basis of national origin against ELL students. In adopting the May 1970 Memorandum, the Supreme Court ruled, in *Lau v. Nichols*, that placing ELL students in a regular program taught in English when they were unable to participate meaningfully in that program because of their limited English proficiency constituted discrimination on the basis of national origin in violation of Title VI.

Similarly, requiring ELL students to take high stakes assessments like the OGTs in English when they are unable to meaningfully demonstrate their knowledge of the academic content standards because of their limited English proficiency, when proficiency in English is not the purpose of the assessment, constitutes discrimination on the basis of national origin in violation of Title VI; such treatment denies ELL students an equal opportunity to participate in the assessments and to earn a high school diploma. OCR notes that recipients may test English language proficiency when such proficiency is the purpose of the assessment and the recipient has determined that English language proficiency is required to earn a high school diploma.

In the instant case OCR finds that ODE, through its policy categorically prohibiting accommodations beyond extended time and the use of a dictionary for any ELL student who had been enrolled in a U.S. school for more than three years, regardless of the student's actual English language proficiency, discriminated against the Student on the basis of national origin, as this policy resulted in the Student not being provided with an equal opportunity to participate in the OGTs. Although ODE asserted that its three-year rule was required by other Federal law and policy, this was not supported by the evidence. Instead, the evidence indicated that ODE

based its policy on anecdotal information, contradictory to research posted on its own website, that three years are sufficient in general for a student to become proficient in English.

OCR considered whether ODE was denying ELL students, including the Student, accommodations on the OGTs because the purpose of the tests was to determine English proficiency. However, ODE's published descriptions of the OGTs do not support this. In addition, ODE permits the use of extended time and a dictionary for ELL students. The evidence further showed that ODE permitted certain ELL students to take the OGTs with additional accommodations beyond extended time and a dictionary. The fact that ODE provided additional accommodations on the OGTs, including the translation of all portions of the science and math OGTs and all but certain key phrases or passages on the social studies OGT, indicates that the social studies, science, and math OGTs were not designed to test English language proficiency. In addition, ODE even allowed portions of the reading and writing OGTs to be translated into other languages; this indicates that the reading and writing OGTs were not solely designed to test English language proficiency. Thus, it cannot be argued that providing the accommodations ODE already allows would somehow lessen the standards for earning an Ohio high school diploma. Therefore, ODE's bright-line rule forbidding districts from providing accommodations beyond extended time and a dictionary to ELL students who have been enrolled in a U.S. school for more than three years and from individually assessing and determining these ELL students' need for additional accommodations discriminated against the Student on the basis of national origin.

As such, OCR finds that ODE discriminated against the Student on the basis of national origin in violation of Title VI, as alleged. The evidence obtained shows that ODE's policies and practices with respect to the OGTs resulted in this discrimination, and likely resulted in discrimination against other ELL students. Specifically, ODE's three-year rule for ELL student accommodations on the OGTs beyond use of a dictionary and extended time, and refusal to provide the English CD or foreign language CDs in the summer administrations of the OGTs, discriminates against ELL students on the basis of national origin. ODE's previous limitations on what specific content could and could not be translated for the OGTs was also discriminatory; however, ODE appears to have resolved this issue with clarifications in its 2017 Rules Book indicating that the limitations on translation apply only to the portions of the OGTs that are testing the students' English language proficiency (i.e., the reading passages in the reading test and the students' written responses to the writing test). Finally, it is not clear that the languages ODE is providing CDs for the OGTs in the fall and spring administrations include the most frequently encountered languages. ODE has provided conflicting information as to what those languages would be in this and another OCR investigation.

### **Voluntary Resolution and Conclusion**

On August 7, 2018, ODE submitted the enclosed signed resolution agreement (the Agreement) to OCR. The Agreement requires ODE to notify the Student that he may re-take the reading, writing, social studies, and science OGTs with all accommodations permitted for other ELL students by ODE and, if the Student elects to retake the OGTs, to provide the Student with OGT preparation services prior to re-taking the OGTs and make arrangements for the Student to retake the OGTs. The Agreement further requires ODE to cease application of any limitations on

language-related accommodations permitted for ELL students on the OGTs that are based on reasons unrelated to the students' actual English language proficiency level (e.g., limitations based on the time the students have been enrolled in U.S. schools or which month the students are taking the OGTs). The Agreement also requires ODE to post and distribute notifications on its website including regarding the availability of accommodations appropriate to ELL students' language proficiency for high-stakes assessments, where the assessments are not designed to test English language proficiency, to ensure that the students are afforded a meaningful opportunity to demonstrate their knowledge of the academic content standards being tested; all changes ODE is making concerning ELL student accommodations for the OGTs; and the opportunity for any ELL student enrolled in grade 9 before July 1, 2014, who is eligible to retake the OGTs, and how to do so.

In light of the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor ODE's implementation of the Agreement. Should ODE fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure its compliance with the Title VI regulation.

This concludes OCR's investigation of the complaint and should not be interpreted to address ODE'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.

Please be advised that ODE may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR acknowledges receipt of ODE's first monitoring report on August 29, 2018, which it is reviewing and to which it will respond under separate cover. For questions about implementation of the Agreement, please contact Ms. Chandra Baldwin and Ms. Suwan Park, who will be monitoring ODE's implementation. Ms. Baldwin can be reached by e-mail at [Chandra.Baldwin@ed.gov](mailto:Chandra.Baldwin@ed.gov) or by telephone at (216) 522-2669, and Ms. Park can be reached by e-mail at [Suwan.Park@ed.gov](mailto:Suwan.Park@ed.gov) or by telephone at (216) 522-4972.

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For questions about this letter, please contact Mr. Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

Sincerely,

/s/

Meena Morey Chandra  
Regional Director

Enclosure