

RESOLUTION AGREEMENT
Between the Granite School District and
The U.S. Department of Education’s Office for Civil Rights (Denver)
Case Number 08081041-B

BACKGROUND

- 1) The U.S. Department of Education, Office for Civil Rights (“Department” or “OCR”) received a complaint of discrimination filed against the Granite School District. The complainant alleged that the District discriminates against national origin minority students in that it segregates and fails to provide equal educational opportunities to students with limited English proficiency who attend the Newcomer Academy.
- 2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-1, and its implementing regulation at 34 C.F.R. pt. 100, taken together, provide in relevant part that no programs or activities receiving Federal financial assistance from the U.S. Department of Education may discriminate on the basis of race, color, or national origin.
- 3) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. pt. 104, taken together, provide in relevant part that no program or activity receiving Federal financial assistance from the U.S. Department of Education may discriminate on the basis of disability.
- 4) Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-65, and its implementing regulation at 28 C.F.R. pt. 35, prohibit discrimination on the basis of disability by public entities.
- 5) OCR’s investigation, including its review of the District’s data response and OCR’s on-site visit, found compliance concerns related to services to Newcomer Academy students and Newcomer Academy parents.
- 6) The District operates the Newcomer Academy to teach intensive academic English and facilitate acculturation before transitioning the students to their neighborhood schools as soon as possible. Granite School District is committed to providing equal educational opportunities to all students regardless of their race, color, ethnic background, national origin, religion, creed, age, lack of American citizenship, disability (physical, health impairment, learning disability, or behavior disorder), sexual orientation or preference.
- 7) Accordingly, the District voluntarily agrees to take the steps outlined in this Resolution Agreement to ensure that:
 - a) All national origin minority students enrolled at the District’s Newcomer Academy receive the services they need to participate meaningfully in the District’s educational program;

- b) Newcomer Academy students who are believed to need special education services are evaluated in a timely manner and receive appropriate special education services; and
- c) Limited English Proficient (LEP) parents of students enrolled in the Newcomer Academy are provided information about school-related matters in a language they understand.

JURISDICTION

- 8) The District is subject to Title VI and Section 504 because it receives Federal financial assistance from the U.S. Department of Education.
- 9) The District is a public entity covered by Title II of the ADA.
- 10) The parties to this Agreement are OCR and the District. In light of this Agreement, the parties have determined that Case Number 08081041-B can be resolved without further investigation or enforcement action at this time and have prepared and agreed to the terms of this Agreement.
- 11) In order to resolve this complaint and to avoid the burdens and expenses of further investigation and possible enforcement action, the parties enter into this Agreement. In consideration of, and consistent with, the terms of this Agreement, OCR agrees to refrain from initiating an enforcement action regarding areas covered in the “Remedial Action” section of this Agreement, except as provided below.

REMEDIAL ACTION

- 12) The District recognizes that it can select Alternative Language Program (ALP) models that are appropriate for its use based upon sound educational theories and practices, including operating a Newcomers Academy. If the District chooses to implement a newcomer program, the District will operate the Newcomer Academy to ensure meaningful educational opportunities for the national origin minority students enrolled in the program. OCR does not require or endorse the use of any particular program model to serve Limited English Proficiency (LEP) students. The District may select approaches, standards, and procedures for its local needs based upon sound educational judgments and practices that ensure equal educational opportunities for its LEP students.
- 13) **A Plan to Serve All Newcomer Academy Students.** The District will develop a written Plan with policies and procedures to ensure that Newcomer Academy students have equal access to the District’s educational program.
 - a) By July 15, 2008, the District will develop and submit to OCR for review and approval an initial draft Plan for providing meaningful educational services to Newcomer Academy students. The District will continue to submit draft plans until OCR approves a final Plan for the District’s full and timely implementation.

- b) For each Plan item, the Plan will specify the appropriate policies and procedures, corresponding activities, the dates for these activities, the persons responsible, and the supporting documentation. The District's Plan will address the following educational services for Newcomer Academy students:
- i) **Program Participation.** The District will ensure, and incorporate into the Plan specific criteria and procedures to ensure, that students are not inappropriately placed in the Newcomer Academy. The Plan will:
 - (1) Specify the objective criteria for determining whether a student qualifies to attend the Newcomer Academy. The criteria will include, but not be limited to, the baseline language assessment scores; and
 - (2) Include that students referred to the Newcomer Academy are not being placed at the Newcomer Academy due to behavioral problems or special education needs.
 - ii) **Voluntary Enrollment.** The District will ensure, and incorporate into the Plan specific criteria and procedures to ensure, that the parents or guardians of all newcomer students are consistently notified that enrollment at the Newcomer Academy is voluntary. The District will adequately and timely notify parents that they may enroll their child in either their home schools or the Newcomer Academy (that language assistance services are offered in the home schools and that placement in the Newcomer Academy is an option). The notice will detail the benefits and possible detriments of both placements and will be provided in the language and medium of communication needed by the parents. The District will document these communications (e.g., maintain a log or list of use of translated notices and interpreters).
 - iii) **Staffing.** The District will ensure, and incorporate into the Plan procedures to ensure, that it has assigned a sufficient number of qualified teachers to teach each course offered at the Newcomers Academy.
 - (1) The District will determine how many certified and endorsed/qualified teachers and other staff members are necessary to fully and appropriately operate the Newcomer Academy. In making this determination, the District will consider the training and qualifications of staff needed to implement the Newcomer Academy education model.
 - (2) The District will determine whether there are a sufficient number of adequately trained staff members assigned to properly implement the Newcomer Academy models and services and, if not, how many additional staff members need to be trained, hired, or assigned to the Newcomer Academy program to fill those staffing needs. The District will implement a plan to fully and timely meet the Newcomer Academy staffing needs (i.e., fully qualified staff teaching all Newcomer Academy students).

- (3) The District will show how it has determined that its teachers have mastered the skills necessary to teach effectively in the Newcomer Academy. For example, in making this determination, the District will use validated evaluative instruments that have been shown to accurately measure the skills in question, and have the teacher's classroom performance evaluated by someone familiar with the method being used.
 - (4) The District will implement the staffing plan described in the preceding paragraphs to meet its staffing needs. The District will monitor the staffing plan's benchmarks or timelines to ensure adequate and timely progress in meeting the District's staffing needs.
- iv) **Extracurricular Activities.** The District will ensure, and incorporate into the Plan procedures to ensure, that it has implemented a program of extracurricular/co-curricular activities that provides opportunities for Newcomer Academy students to participate in such activities as appropriate with non-LEP students. The program will be designed annually and will include staple (repeated) types of activities as well as events appropriate for that year only. An annual calendar, with descriptions of activities/events and records of student participation, will be maintained and included as appropriate in the annual evaluation. All activities will be developed and implemented in a manner that will safeguard the daily instructional time for Newcomer Academy students.
- v) **Exit from the Program and Monitoring.** The District will adopt objective criteria it will use to determine when students will transfer from the Newcomer Academy to return to their home schools. The Plan will provide that enrollment at the Newcomer Academy is flexible and dependent on the educational needs of the student, but that attendance at the Newcomer Academy will typically not exceed one academic school year. At a minimum, these criteria will ensure that:
- (1) The District will evaluate all Newcomer Academy students for exiting by the end of each semester. If a student's enrollment in the Newcomer Academy exceeds one academic year (e.g., preliterate students), the District will document for the additional semester a legitimate educational justification for this continued placement, based on the educational needs of the individual student.
 - (2) The determination of English-language proficiency will be based on, in whole or in part, English language proficiency assessment objective standards or test scores. Where a "body of evidence" is used to determine exit, the District will identify the evidence (type and baseline scores), and identify the person(s) by title (including a certified teacher with an ALP endorsement) who will make the reclassification decision. The District will explain to OCR how the chosen standards will ensure that students are not retained at the Newcomer Academy beyond the time needed to acquire the language and social skills necessary to be successful in their home schools.

- (3) The District will establish a transition plan to ensure that Newcomer Academy students will receive appropriate ALP and guidance counselor services at their home schools after exiting the Newcomer Academy.
 - (4) The District will take steps to prepare home school teachers for teaching former Newcomer Academy students entering their classrooms (i.e., develop annual staff development training regarding understanding the educational needs of newcomer students and techniques for teachers to incorporate the students into mainstream classes).
 - (5) Former Newcomer Academy students will be formally monitored at least once per semester for two years after exit from the Newcomer Academy. Documentation for each student will be consistently maintained and address academic performance.
 - (6) The District will timely remediate academic deficiencies identified in students who have exited the Newcomer Academy. A description of the remediation steps will be included in the Plan.
- vi) **Program Evaluation and Modification.** The District will conduct an annual longitudinal performance evaluation of the Newcomers Academy. This step will include procedures for formal evaluation of the District's implementation of the Newcomer Academy program and procedures for formal reporting of identified deficiencies and required modifications and will be built into the program design. The comprehensive evaluations of the Newcomer Academy will consider program effectiveness and the impact of the Newcomer Academy on participating students, including a comparison study of newcomer students who are not enrolled in the Newcomers Academy program. Such evaluations will consider the aggregate progress and success of all current and former Newcomer Academy students relative to the District's goals for providing educational services to LEP students. The District will take steps to ensure that modifications required to remediate identified deficiencies in the services for LEP students are implemented. The District agrees it will not implement newcomer programs or services that, despite soundness of design and implementation, do not satisfy its goals and objectives for providing educational services to LEP students.
- (1) For the first self-evaluation due by July 15, 2008, the District will provide:
 - (a) A roster of Newcomer Academy students for the previous year, by name, grade, home language, home country, date of entry into the United States, English language proficiency scores, any identified disabilities, and entrance and exit dates from the newcomer program;
 - (b) An assessment of the placement and services for the Newcomer Academy students;

- (c) A description of the program's staff training needs and the District's response to identified needs; and
 - (d) Its policies and goals for providing educational services to the Newcomer Academy students. This will include the District's objectives for providing educational services to Newcomer Academy students, including the objectives of the ALP models selected. It will also include a list of specific, measurable language acquisition and performance goals for Newcomer Academy students.
- (2) The District's Plan will provide, for school year 2008-09 by June 1, 2009, and all subsequent program evaluations (to be conducted at least once every two years):
- (a) A student roster or other database system used to track Newcomer Academy students' home and primary languages, date of entry into the United States, English language proficiency assessments, and special education placement (including disability category), if applicable. The District will also develop and describe a student roster or database system to measure the academic and English-language acquisition progress of Newcomer Academy students over time.
 - (b) A description of the factors used to determine the effectiveness of the Newcomer Academy programs and services. Some factors to include in the self-evaluation are:
 - (i) Whether current Newcomer Academy students are satisfying established goals and objectives for student participation and achievement;
 - (ii) Whether current Newcomer Academy students are gaining in English language proficiency in speaking, reading, writing, and comprehension;
 - (c) The procedures used to determine the extent to which staff hiring, training, or development is needed to ensure a full contingent of qualified teachers for the Newcomer Academy to fully implement the Plan; and
 - (d) The specific steps the District will take, including time frames and persons responsible, to ensure that program modifications or improvements are implemented when and where necessary to ensure program effectiveness for Newcomer Academy students.
- c) **Implementation of the Plan.**
- i) Within 30 days of OCR's approval of the District's Plan, the District will submit a complete, final copy of the Plan to OCR and begin implementing all terms of the Plan. The District will implement the specific Plan provisions in accordance with the

policies, procedures, and time frames specified in the Plan. The District will fully implement the Plan by October 1, 2008.

- ii) Within 60 days of OCR's approval of all terms of the Plan, the District will:
 - (1) Provide documentation to demonstrate that all Newcomer Academy administrators and staff have received a copy of the Plan; and
 - (2) Provide a training agenda for administrators and staff regarding the implementation of the Plan (including training dates and training responsibilities).
- iii) The District will provide supporting documentation of Plan implementation, according to the reporting data requests of OCR.

14) **Newcomer Academy Students with Disabilities.**

- a) By July 15, 2008, the District will develop draft policies and procedures to ensure that students enrolled in the Newcomer Program who are believed to need special education services or other disability-related modifications are timely evaluated for such services and receive such services in accordance with Section 504 at 34 C.F.R. Sections 104.34-36.
- b) Within 30 days of approval by OCR, the District will implement these steps and incorporate them into the District's Plan to serve all Newcomer Academy students that is described in this Agreement in Paragraph 13. The District will provide supporting documentation of implementation, according to the reporting data requests of OCR.

15) **Parent Communication.**

- a) The District will ensure that it complies with Title VI and its implementing regulation at 34 C.F.R. Part 100, with respect to parental communications with Newcomer Academy parents and guardians (hereinafter collectively referred to as "parents"). In addressing this issue, the District will consider the following factors: 1) the number or proportion of LEP individuals likely to encounter the program; 2) the frequency with which LEP individuals come in contact with the program; 3) the nature and importance of the services provided by the program; and 4) its resources.
- b) *Policies and Procedures:* The District will develop policies and procedures that it will use to provide LEP parents of students enrolled at the Newcomers Academy with meaningful communications so they can access its benefits, services, and information. The procedures will address methods that staff members will use to determine when parents are in need of language assistance services, and methods to address those parents' language needs. The procedure will address the methods that the District will use to communicate the parents' language needs to other appropriate District staff members (i.e., an appropriate mix of translation and interpreter services).

- c) *Interpreter Resources*: The District will develop an interpreter resource list of persons who are proficient in English/Spanish/and other languages, and who may be used as interpreters for communicating with LEP parents of students enrolled in the newcomer program. The District will ensure that the program's staff members are provided the list of qualified interpreters, with their contact information and availability, and the method or procedure for obtaining interpreter services. The District will ensure that all persons on its interpreter resource list are proficient in English/Spanish/and other languages, and have been appropriately trained regarding the role of interpreter, the ethics of interpreting, and the need to maintain confidentiality. The District will periodically review and update its interpreter resource list to ensure it meets ongoing needs for effectively communicating with its LEP parent population.

- d) *When Interpreters Will be Provided*: The District will describe the types of situations or circumstances in which it will offer interpreter services as a method of providing Newcomer Academy LEP parents meaningful access to information that it provides to parents. It will also describe and implement a method designed to ensure that staff will promptly obtain and make available interpreter services to LEP parents consistent with its established approach.

- e) *Staff Training*: The District will develop a training plan to train appropriate staff involved with services related to students enrolled at the Newcomer Academy on the District's approach to communication with Newcomer Academy parents and provide a copy to OCR. Staff training will include: (1) when and how to obtain qualified language assistance; (2) the importance of effective communication with LEP parents; (3) use of interpreters when staff receive or make calls to LEP parents; (4) how to work effectively with interpreters; (5) the impact of ethnic and cultural differences on effective communication; and (6) applicable record-keeping procedures and reporting requirements. The District will provide ongoing staff training to ensure proper long-term implementation of the District's approach.

- f) *Translation of Documents*: The District will determine the appropriate mix of interpretation and translation services it needs to communicate effectively with Newcomer Academy parents about policies, procedures, and information communicated to other parents. The District will also develop criteria for determining which District documents will be translated for Newcomer Academy parents. For written communications that are routinely distributed to groups of parents, a determination will be made regarding which of these documents will be translated and which language group(s) will receive translated versions of the documents. The District will make available written translations for appropriate distribution and will remind its staff members that these are available and are to be used appropriately. For those languages that are less prominent or where translations are not feasible, the District will ensure that students and parents have been advised, in a language that they understand, of who to contact in the District if they need assistance in understanding notices or communicating with District staff members and appropriate interpreter services will be provided.

- g) *Record-Keeping System.* The District will develop a record-keeping system of interpreter and translator services requested related to the newcomer program. The system will include information on the interpreter and translator services requested, including the primary language of the student/parents and their names, the date of the request and the date services were provided, the source and name of any interpreter or translator used (e.g., bilingual staff, staff interpreters or translators, contract interpreters/translators, community volunteers, telephone interpreter lines), and the reason for/purpose of the request. The District will develop a procedure to track the system to ensure that communication needs of the national-origin language-minority parents are being effectively met through appropriate use of interpreters and translators.
- h) *Monitoring:* The District will develop a procedure to ensure that communication needs of the Newcomer Academy LEP parents are being timely and effectively met through appropriate use of interpreters and translators.
- i) By July 15, 2008, the District will provide OCR with its draft policies and procedures for communicating with Newcomer Academy parents in a language they understand with respect to the information that is provided to other parents. OCR may comment and make recommendations on these policies and procedures to ensure compliance with Title VI and its implementing regulation. Within 30 days of OCR's approval of the policies and procedures, the District will provide OCR with a final copy. The District will begin fully implementing its policies and procedures by October 1, 2008. By January 15, 2009, the District will provide supporting documentation of all actions taken to implement this section of the Agreement.

ENFORCEMENT OF THIS AGREEMENT

- 16) If, at any time, the District desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify OCR in writing, setting forth the facts and circumstances thought to justify modification of this Agreement and the substance of the proposed modification. Until OCR notifies the District in writing that it has agreed to the proposed modification, the proposed modification will not take effect. Any modifications must receive the prior written approval of OCR, which approval shall not be unreasonably withheld or delayed.
- 17) For purposes of the immediately preceding paragraph, it is a violation of this Agreement for the District to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with OCR for an extension of the relevant time frame imposed by the Agreement.
- 18) OCR may review compliance with this Agreement at any time. As part of this monitoring, OCR may, at its discretion, conduct unannounced on-site inspections, including: review of all District and student records, inspection of District facilities and programs, and interviews of District employees and students (subject to parental consent).

- 19) If OCR believes that the District has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written permission from OCR regarding a modification of the relevant terms under the terms set forth above, OCR will so notify the District in writing and it will attempt to resolve the issue or issues in good faith. If OCR is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to the District, it may take steps to initiate an enforcement action through administrative proceedings through the Department of Education or as a referral to the Department of Justice to enforce the terms of this Agreement and to take appropriate steps to enforce Title VI, Section 504, Title II of the ADA, and their implementing regulations.
- 20) Failure by OCR to enforce this entire Agreement or any provision of it with regard to any deadline or any other provision shall not be construed as a waiver of OCR's right to enforce other deadlines and provisions of this Agreement, or of the District's obligation to comply with Title VI, Section 504, Title II of the ADA, and their implementing regulations.
- 21) This Agreement constitutes the entire Agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, which is not contained in this written Agreement, shall be enforceable.
- 22) This Agreement does not purport to remedy any other potential violations of Title VI, Section 504, Title II of the ADA, their implementing regulations, or any other federal law. This Agreement does not affect the District's continuing responsibility to comply with these laws and regulations.

IMPLEMENTATION OF THIS AGREEMENT

- 23) This Agreement will remain in effect until OCR determines that the District has fully complied with all of its provisions. Upon determining that the District has achieved full compliance with the terms of this Agreement, OCR will conclude its monitoring and will notify the District that it is closing this case and terminating this Agreement.
- 24) The person signing for the District represents that he or she is authorized to bind the District to this Agreement.
- 25) The effective date of this Agreement is the date of the last signature below.

