



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS, REGION I

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921

February 1, 2012

Dr. Nicolas A. Fischer
Superintendent
New London Public Schools
134 Williams Street
New London, Connecticut 06320-5296

Re: New London Public Schools
Compliance Review No. 01-10-5002

Dear Superintendent Fischer:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR), has completed and is closing its investigation in the above-referenced compliance review pursuant to the enclosed resolution agreement entered into with the New London Public Schools (District). OCR initiated this compliance review to examine the District's treatment of English language learners (ELLs) in its elementary and secondary schools. During this review, OCR conducted site visits to the District on 12 days, which included visiting all six of the District's schools (four elementary, one middle school and the high school, which includes both the New London High School (NLHS) and the Science and Technology Magnet High School (STMHS)). OCR interviewed numerous people, including all of the school principals, all key administrators responsible for administering the District's ELL programs, a majority of the teachers and tutors who provide language services to ELL students in the District, and several high school students who were former limited English proficient (FELL) students. OCR also reviewed student files, including a sampling of files of ELL students who also have disabilities and receive special education. We also observed nine different classrooms during our on-site visits.

Based on this review, we identified a number of compliance concerns under Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 C.F.R. Section 100.3(a) and (b) (Title VI); Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Sections 104.33, 34, 35 and 36 (Section 504); and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Section 35.130 (Title II). These compliance concerns are outlined below and the District has agreed to remedy these concerns as set forth in the enclosed agreement. OCR determined that the provisions of the agreement are aligned with the issues identified and information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the District's completion of the steps outlined in the agreement, and the monitoring will be closed once the District has fully implemented the provisions of the agreement and is in compliance with the above-referenced regulations.

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

I. Jurisdiction

OCR initiated this compliance review under Title VI, which prohibits recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin. We also addressed issues affecting students with disabilities under Section 504¹. Since the District receives Federal financial assistance from the U.S. Department of Education (Department), the District is required to comply with both Title VI and Section 504.

II. Legal Issues

OCR's compliance review focused on the following legal issues:

- A. Whether the District discriminates against national-origin minority ELL students on the basis of their national origin by not providing them services necessary to participate meaningfully in the District's educational program, in violation of Title VI.
- B. Whether the District discriminates against limited-English proficient parents (ELL parents) by failing to communicate with them in a manner that provides them meaningful access to the District's programs, services and activities, in violation of Title VI.
- C. Whether the District discriminates against limited-English proficient students on the basis of their national origin and/or disability in the pre-referral, referral, evaluation and placement of ELL students into special education programs and services in violation of Title VI or Section 504.

III. Relevant Laws, Regulations, OCR Policy and Case Law

Title VI and Section 504 contain numerous provisions that prohibit discrimination by recipients of U.S. Department of Education funding on the bases of race, color and nation origin (Title VI) and disability (Section 504). Additionally, OCR has several Title VI policy documents that provide guidance on the issue of ELL students and special education: the Department's memorandum issued on May 25, 1970, entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," the December 3, 1985 policy memorandum, entitled "The Office for Civil Rights' Title VI Language Minority Compliance Procedures," and the memorandum issued on September 27, 1991, entitled "Policy Update on Schools Obligations Toward National Origin Minority Students with Limited-English Proficiency." The Departmental Policy Memorandum issued on May 25, 1970, entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin" (the May 1970 memorandum), 35 Fed. Reg. 11,595, clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to language minority 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

¹ Title II, which applies to public entities such as the District, is viewed as consistent with and not providing additional legal theories or approaches to Section 504 for this issue and therefore is not further cited or referenced in this document.

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."

OCR also applies relevant case law in determining whether a school district is in compliance with Title VI. The most notable cases, from which much of OCR policy is derived, are the U.S. Supreme Court decision in *Lau v. Nichols*, 414 U.S. 563 (1974), and *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). The relevant portions of the Title VI and Section 504 regulations, OCR policies, and court cases are referenced below in the context of our findings.

IV. District Background

The District is a public school district located in New London, Connecticut, which has four elementary schools, one middle school, and one high school. The high school is comprised of two schools - New London High School (NLHS), and the New London Science and technology Magnet School (STMHS)². According to the District, during the 2009-2010 school year, of the 3,019 students attending schools in the District, 688 or 22.8% are considered ELL students. This constitutes the largest percentage of ELL students in the entire state of Connecticut. The District's percentage of ELL students is more than four times the state average percentage of ELL students, and the number of ELL students in the District has grown over the past several years.

The largest population of students in the District is of Hispanic national origin (45% of the total student population), and the largest number of ELL students speak Spanish as their primary home language (90% of the ELL students). In addition to Spanish and English, the District has recorded that eleven other languages are spoken in the homes of its students. Of these other languages, none is spoken in more than five percent of homes of students in the District.

V. Findings of Fact and Legal Analysis

A. Whether the District discriminates against national-origin minority ELL students on the basis of their national origin by not providing them services necessary to participate meaningfully in the District's educational program, in violation of Title VI

1. Identification and Evaluation of ELL Students

Pertinent OCR Policy

The May 1970 memorandum states that districts must take affirmative steps to rectify national-origin minority students' language deficiencies where inability to speak and understand the English language prevents ELL students from effective participation in the district's program. The September 1991 memorandum states that a district should have procedures in place for identifying and assessing ELL students to ensure that all national-origin language-minority students who are unable to participate effectively in the mainstream instructional program, due to their limited proficiency in English, are receiving alternative language services. Thus, such procedures should be designed and implemented to ensure that a district identifies all national-origin language-minority students who are unable to speak, read, write, and understand the English language.

² Hereafter, "High School" refers to both NLHS and STMHS.

a. Home Language Survey

Investigative Findings

OCR found that the District uses a home language survey (HLS) which asks the following three questions:

- What is the primary language spoken by your child at home?
- What is the primary language spoken by you or other persons in your home?
- What language did your child learn to speak first?

During our investigation, OCR found that if a parent answered only one of the three questions on the HLS with a language other than English, the District's procedures did not require, and the District did not typically administer, an assessment to determine whether the student was an ELL. While the District may assess any student whom it believes is not proficient in English, it is not required to do so unless two of the three questions are answered with a language other than English. OCR found files in which students were living with relatives or foster parents who spoke English both to the student and among themselves, which resulted in the first two questions being answered as "English." A review of one student folder indicated that the student (who was not assessed because the HLS did not require it) performed poorly in school and was retained in grade at the end of the academic year. Comments from the student's teacher who recommended retention indicated that at least part of the reason for the retention was related to the student's lack of language skills including vocabulary.

Compliance Concern

OCR found that because the survey required two of the three questions (rather than only one) to be answered with a language other than English in order to trigger an evaluation of the student's English language proficiency, the District was not adequately ensuring that it had identified all of its students who were ELL and who needed English language services.

b. LAS Links Assessment

Investigative Findings

All students whose HLS shows two of the three questions related to home language with a response other than "English" are assessed using the language Assessment Scales (LAS) Links to determine their level of English language development. According to the District's ELL Identification Procedures, the LAS Links is to be administered by an English as a second language (ESL) teacher or a trained designee within two weeks of the student's date of entry into the District. OCR found, through file reviews, that new students are consistently assessed by an ESL teacher using the LAS Links, within a few weeks of their entering the school system.

OCR also found that younger students, ages 5 and 6, were administered the pre-LAS to assess their level of English language development (ELD). According to the District, a score of either a 4 or 5 on the oral pre-LAS constitutes proficiency, and therefore does not result in such students being considered ELLs. The pre-LAS explicitly recommends, however, that students ages 5 and 6 be administered the pre-literacy component of the pre-LAS. OCR contacted the publisher of

the pre-LAS (CTB McGraw-Hill), and spoke with a Research Scientist and a Program Manager for the pre-LAS and LAS links, who confirmed that for 5 and 6-year-old students, the publisher intended that the pre-literacy component of the Pre-LAS be administered in addition to the verbal portion, in order to get a complete picture of the student's English language development. Thus, the failure to administer the pre-literacy component of the pre-LAS may result in an incomplete or inaccurate assessment of a student's ELD.

OCR found that the District did not typically administer the pre-literacy component of pre-LAS. In one student file OCR saw a student who received a score of 83 on the oral pre-LAS (which is one of the lowest possible scores for a level 4 ELL student), and because level 4's and 5's are considered "proficient" in English, the student was not considered an ELL and consequently he was deemed not eligible for ESL or other language support services. A closer review of the student's academic file showed that he did not perform well academically, and that he was retained in kindergarten. District staff acknowledged that there were certain to be other students who would be considered ELLs if the pre-literacy component of the pre-LAS were administered in addition to the oral component. OCR found that, because of the way the LAS was administered, some students who were not fully proficient in English were denied language services such as ESL.

Compliance Concern

While OCR does not require that a particular test be used to assess whether a student is considered to be an ELL, when a district has chosen a particular assessment to determine whether a student is an ELL (here, the pre-LAS), and that assessment clearly contemplates the use of a pre-literacy component to make the determination of English proficiency, the failure to administer that pre-literacy component of the assessment can give an incomplete or inaccurate assessment of a student's ELD, and result in a student being excluded from English language services to which he or she should be entitled. OCR has concluded that the failure to administer the pre-literacy component of the pre-LAS coupled with the fact that District staff who are responsible for assessing potential ELL students acknowledged that there are students who test out as proficient on the pre-LAS, but who would nevertheless be considered ELLs if their pre-literacy skills were considered, constitutes a compliance concern under Title VI.

2. English Language Services Program Design, Implementation and Evaluation

Pertinent OCR Policy

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 standard for the Department's Title VI policy concerning discrimination on the basis of national origin against language-minority students.

The December 1985 and September 1991 memoranda outline the standards and procedures used to evaluate school districts for compliance with Title VI in this area. In summary, a school district must identify which of its national-origin minority students have limited English proficiency, and provide them with an effective program that affords them meaningful access to the district's

educational program. In evaluating a district's compliance with Title VI, OCR uses the analytic framework articulated in *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), which was adopted in the September 1991 memorandum. First, OCR determines whether the school district has chosen a program model for providing educational services to ELL students that is based upon a sound educational approach or upon a legitimate experimental strategy. Second, OCR determines whether the district is effectively implementing the educational theory it adopted. A school district must allocate adequate and appropriate staff and resources, such as instructional materials, to implement its chosen program properly. Finally, OCR determines whether the district has taken action if the program, after a legitimate trial, fails to produce results indicating that the language barriers confronting students are actually being overcome.

Investigative Findings

The District provides several different programs at different schools and grade levels in order to serve the needs of its ELL students. During the 2009-2010 school year, the Jennings Elementary School enrolled the overwhelming majority of ELL students at the elementary level in the District with 284 ELL students. At Jennings, the District operates a dual language immersion program in which students are taught in two languages – English and Spanish. English and Spanish speaking students share the same classroom to acquire academic content in all content areas, to develop proficiency in their first and second languages (English and Spanish), and to acquire cross-cultural awareness and understanding with instruction occurring in both languages. Jennings students receive some ESL instruction through push-in or pull-out services (i.e. out of class or in class ESL services), but the District offered no clear explanation regarding the amount of ESL services those students should receive. In February of 2010, the District contracted with the Center for Applied Linguistics (CAL) to evaluate its programs for ELL students. CAL made a number of recommendations including changing the structure of the dual language program from alternating teaching in Spanish and English on a weekly basis to teaching in both English and Spanish on a morning/afternoon daily basis. The District is in the early stages of restructuring its program, and the Jennings program has recently changed from alternating weeks of instruction in each language, to dividing the days into blue and red blocks (morning and afternoon sections).

At the remaining three elementary schools, the Harbor (14 ELLs),³ the Nathan Hale (28 ELLs), and the Winthrop Elementary Schools (28 ELLs, 14 of which are at the Shoreline Academy alternative school which is a “school within a school” located at Winthrop), ELL students are provided language services through instruction in ESL, which is delivered primarily by ESL tutors. Students receive instruction in all classes in English, and are taught specific English language skills by using either pull-out or push-in models. ELL students are taught English language skills focusing on vocabulary, understanding grammatical structures, and improving literacy skills.

During the 2009-2010 school year, the Bennie Dover Jackson Middle School (BDJMS) had 130 ELLs enrolled, the NLHS had 169 ELLs, and STMHS had 5 ELLs from New London.⁴ At BDJMS and NLHS, students receive ESL and sheltered content instruction (SI). In SI classes, students are taught all academic subjects in English, and teachers follow the core curriculum,

³The number of ELL students was reported by the District for the 2009-2010 school year.

⁴The STMHS actually had a total of 12 ELL students, only 5 of whom were from New London and 7 of whom were from surrounding communities which the STMHS also serves.

which is modified to meet the language development needs of ELLs. Specific strategies are used (such as increased use of visual aids, repetition, and frequent reviews to reinforce key concepts), to make the content more comprehensible. OCR learned that there are 9 SI classes offered at the NLHS: World History, U.S. History, Government, Introduction to Algebra, Algebra I, Geometry, Integrated Science, Biology, Chemistry, and 4 ESL classes: ESL I, II, III, and Reading and Writing.

The District also informed OCR that the 5 New London ELL students at STMHS receive ESL support services from an ESL tutor, but that there were no SI classes offered at the STMHS.

The District's ELL Procedures Handbook on Bilingual and ESL Instruction, dated August 2007 (which the District is in the process of updating), contains a description of procedures for evaluating and identifying ELL students, as well as a general description of the types of programs and services offered to instruct ELLs. The Handbook also offers a general description of what is covered in the three levels of ESL classes, but it provides no guidance or parameters on the *amount* of services to which each student is entitled based on his or her level of ELD. Additionally, none of the tutors or teachers interviewed by OCR who provided ESL services to ELLs was able to tell OCR how many hours of ESL services students were entitled to receive under the District's language program. In the absence of specific standards indicating how many hours of service ELL students at beginner, intermediate and transitioning levels are entitled to receive, OCR found that schools provide amounts of services that are commensurate with the availability of staff, rather than the needs of students. This was particularly true of low incidence ELLs, such as ELLs whose native language is Haitian Creole. According to District data, there were 39 ELL students who speak Haitian Creole, who needed translations and tutorial support from a Haitian Creole speaker (5 at the Jennings School, 2 at the Harbor School, 2 at the Winthrop School, 6 at the Nathan Hale School, 1 at the Shoreline Academy, 10 at the BDJMS, and 13 at the High School), but there were only two part-time tutors in the entire District who work with all of the Haitian students. Upon reviewing the schedules of the tutors, it is clear that there are beginner ELL students in certain schools who go entire days without receiving English language services. Our investigation also revealed, with respect to low incidence ELL students at the elementary school level (i.e. non-Spanish-speaking ELL elementary school students), the District does not have adequate staff to provide the ESL and other language support services needed to serve these students.

Interviews at the NLHS indicate slightly more structure, with a progression of ESL I, II and III and a reading and writing class, however it is not clear what each of these levels means in terms of the amount of instruction students receive. Staff whom OCR interviewed at the NLHS stated that some ESL Level I students at the high school were placed into Level II classes because of overcrowding in Level I, which suggests that they are not being afforded appropriate services to meet their language needs. These problems were reported to be especially acute in ESL I and II as well as in SI classes. Additionally, ELL staff was unable to state how much instructional time in ESL their ELL students were supposed to receive because there were no standards or guidelines for instructional time for each of the three levels of ELD. Guidance staff indicated that students placed in ESL I or II are usually assigned to sheltered math, science and history classes, and that students with one or more mainstream content classes usually get resource support from regular staff for these non-sheltered classes.

At BDJMS, OCR found that a number of students who were ELD level 4 (and one at ELD 3), and who had not met the District's exit criteria, were fully mainstreamed, sometimes with tutor

support, and sometimes without. Among the files reviewed at NLHS, OCR found that several students with ELD levels of 1, 2 and 3 had no ESL or SI classes on their schedules. At both BDJMS and NLHS, OCR found instances where placement recommendations for ESL and SI were not followed.

Additionally, staff noted that sometimes ESL pull-out occurs during core academic classes such as science and social studies (as opposed to during English language arts classes), without content support to make up for the missed content classes. ELL students are therefore missing core academic instruction in order to get the ESL services.

OCR's review of student files during this investigation also revealed that a large number of ELL students were being retained in kindergarten at the Jennings School. The records show that in the 2008-2009 school year, 7 out of 70 kindergarten students or 10% of all kindergarten students were retained. The files show that all 7 of these students were ELLs. Many of the comments contained in the teacher reports which recommended retention cited a lack of vocabulary needed for 1st grade, and performing below grade level. Some of the students who were retained were beginner English language learners at level 1 on the pre-LAS. At the kindergarten level at the Jennings school, of the 70 total kindergarten students, 42 were ELLs. The 7 students who were retained represent 16.7% of the total ELL kindergarten population of students. Of the remaining 28 non-ELL kindergarten students at Jennings, none were retained. Additionally, OCR found that at the Harbor School (which spans kindergarten through 5th grade), of the 14 ELL students, 5 or 35.7% were retained, while only 7 out of 291 (2.4%) of the non-ELL students were retained. OCR also noted that several of the retained students were also students with special needs, further complicating the analysis of what might be causing their low academic performance.

Compliance Concern

OCR determined that the District is not providing ELL students with a consistent ELL program staffed and facilitated by qualified teachers. The District has not been able to explain how its K-12 ELL program is structured in terms of the amount of time and type of instruction that different ELL level students are supposed to receive. Each school in the District seems to have built its own schedule arranging weekly pull-out and push-in by ESL teachers and tutors, however it is not clear how these schedules correlate with ELL level and ability. While the District did provide an e-mail offering guidance on the amounts of instructional time students may receive ESL instruction, there is little consistency in its application, and the guidance suggests that some ELL students with level 3 ELD may receive as little as 9 minutes per day (45 minutes per week) of ESL, and some ELL students who are beginners (Level 1), may receive as little as 18 minutes per day (90 minutes per week) of ESL instruction. OCR also determined that, in failing to detect or take steps to address the disproportionately high percentage of retentions of ELL students, the District has failed to monitor and evaluate its program to ensure that the program is effective in teaching ELL students sufficient English and content to enable their promotion.

3. Staffing

Pertinent OCR Policy

OCR's September 1991 policy memorandum requires a district to provide the staff necessary to properly administer its chosen alternative language program. A district lacking adequate staff must

either hire qualified teachers trained to provide alternative language services or require that teachers already on staff work toward attaining those formal qualifications. A district must complete this transition within a reasonable period, and should be able to show that its teachers have mastered the skills necessary to teach effectively in the chosen program. According to *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), if a District shows that it has unsuccessfully tried to hire qualified teachers, then it must provide adequate training to teachers already on staff. Such training must take place as soon as possible.

OCR's September 1991 policy memorandum also provides that 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 ELL students. In making this determination, the district should use validated evaluative instruments, that is, tests that have been shown to accurately measure the skills in question. The district should also have the teachers' classroom performance evaluated by someone familiar with the method being used.

Investigative Findings

OCR found that a substantial portion of the District's ELL program relies on instruction from tutors who are not certified to teach or provide ELL services. Mainstream teachers OCR interviewed at the elementary and middle school level acknowledged that they rely heavily on tutors to support their ELL students. Several teachers even stated that tutor instruction is the primary way the District teaches ELL students.

OCR's investigation revealed that tutors are assigned a large caseload of students – e.g., as many as 40 students per tutor at the Jennings school. Tutors might work with some guidance from the mainstream teacher as to what topics are being discussed in the class, but they are not typically offered any pedagogical guidance on how to instruct the students.

OCR also found that some Spanish speaking tutors function largely as translators of content during push-in services. There does not appear to be any clear policy on whether the tutors' role is to 1) translate 2) help with content or 3) help teach English. Different tutors OCR observed and interviewed viewed their roles differently.

At the BDJMS and at Winthrop School, there appeared to be no distinction in job function between a tutor and an ESL-trained teacher. At BDJMS, for example, an uncertified tutor serves as the primary ESL support for the ELL students. At Winthrop School, the ELLs are divided up with approximately half being assigned to work with a certified ESL teacher and the other half assigned to an uncertified tutor. Consequently, some of the students are receiving all of their ESL instruction from a tutor rather than a certified teacher. OCR's file reviews confirmed that the tutor at Winthrop has served as the teacher of record for ELL students, including attending IEP team meetings in the role of regular education teacher.

At one school, the ESL tutor who works with ELLs is responsible for conducting all of the LAS Links assessments during the month of February each year. According to her, she spends between 400 and 600 hours conducting the annual assessments, and she is therefore unavailable to provide any tutoring during that time. The students to which she is assigned are therefore without ESL services during the day. While the District indicated that these students may get after-school help which is available to all students, they are nonetheless denied ESL services to which they are entitled for at least one month during the school year.

At the STMHS, students whom OCR interviewed explained that while a tutor was sometimes available to provide support for them, the tutor did not have the vocabulary necessary to translate some of the technical terms used in the science classes that they took.

Compliance Concern

OCR examined the District's staffing to determine whether it was adequate to implement its Dual Language and ESL programs. Although OCR found that the District's ESL tutors have a variety of backgrounds and experience in ESL instruction, data provided by the District indicates that none of the tutors who instruct ELLs is either certified to teach in Connecticut, or on a waiver pending certification. OCR has concluded that the District has not hired qualified staff to implement its chosen program of ESL instruction in its schools.

4. Exit Criteria and Monitoring

Pertinent OCR Policy

Depending on individual educational need, ELL 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 ELL student's ability to speak, read, write, and understand English, prior to reducing or discontinuing recognized alternative language program services.

The September 1991 memorandum provides three means to determine the sufficiency of criteria established by a district for determining whether ELL students no longer require alternative language services. First, the exit criteria should be *based on objective standards* from which the district can explain how it ensures that students will be able to participate meaningfully in the mainstream educational environment. Second, the exit criteria should ensure that students can speak, read, write, and comprehend English sufficiently to participate meaningfully in the district's educational program. Third, the exit criteria must provide a meaningful opportunity for ELL students to be reassigned to the mainstream educational environment. In addition to these criteria, 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.

The September 1991 memorandum states that, once exited from the alternative language program, former ELL students should be able to participate meaningfully in the mainstream educational environment. That is, they should be able to keep up with their non-ELL peers academically and participate meaningfully in essentially all aspects of the curriculum without the use of simplified English materials. In order to implement this requirement, districts should monitor the academic progress of former ELL students on an individual basis.

OCR considered whether the District uses exit criteria that ensure that ELL students have sufficient proficiency in English to participate meaningfully in the regular educational program after they exit from the alternative language program. OCR also considered whether those students are adequately followed to ensure their transition to English-only education successfully secures that meaningful participation for the long-term.

Investigative Findings

OCR found that the District uses explicit exit criteria to determine when a student has attained proficiency in English that would warrant exiting the language program and being mainstreamed for all classes. The District has established the following criteria at the different grade levels for exiting its ESL services (as set by the Connecticut State Department of Education):

Kindergarten:	Level 4 or 5 on the LAS Links and Grade level performance on the Developmental Reading Assessment (DRA-2)
Grades 1 and 2:	Level 4 or 5 on the LAS Links and Grade level performance on the DRA-2
Grades 3 through 9:	Level 4 or 5 on the LAS Links and Proficient or above on the math and reading subtests and basic or above on the writing subtest of the Connecticut Mastery Test (CMT).
Grades 10 through 12:	Level 4 or 5 on the LAS Links and Basic or above on the math and reading and writing subtest of the Connecticut Academic Performance Tests (CAPT).

The ELL Procedures Handbook states that students who are exited will receive monitoring services for two academic years to ensure that those exited students are successful in the general education program. During interviews with staff and administrators, OCR was consistently informed that once a student exits the ELL program, there is no formal monitoring of those students apart from the general year-to-year testing of all students to determine their academic progress. District staff and administrators stated that since the exit criteria are so high (especially the requirement of being at or above proficient on the reading subtest on the CMT for grades 3 through 9 and being at or above basic on the reading and writing subtests for grades 10 through 12 on the CAPT), it is very unlikely that a student who achieves such scores would go back to being an ELL. Staff did acknowledge that there are a number of students who leave the District for the summer to visit their native countries, and then return to the District in the fall with diminished English language skills. Staff told OCR that it is common for such students to experience a regression in their English language skills over the summer, and consequently it is likely that some students, who may have been considered proficient in English at the end of an academic year, will begin the following academic year as ELLs. District staff stated that they could not recall a single student who had ever re-entered the ELL program after having been exited.

OCR reviewed the grade point averages (GPAs) of all middle and high school students who were exited from the English language program based on their testing as fully English proficient. Data provided by the District showed that during the past academic year there were 18 students exited from the English language program at either the BDJMS or NLHS. Of these students, only one had a GPA above 3.0, and only two had GPA's above 2.0. The remaining 15 students (83%) had GPA's below a 2.0 (i.e. lower than a "C" average), and seven students (39%) had GPA's lower than a 1.0 (i.e. below a "D" average). The overall average weighted GPA of the 18 students was around a 1.04 or a "D" average. Meanwhile, the overall weighted GPA of all of the District's un-exited ELL high school students that year was a 2.22 or a "C" average.

Compliance Concern

The data provided by the District indicates that the overwhelming majority of students who have exited the program from the middle school and high school in the past year have not been successful academically. As noted above in the Pertinent OCR Policy section, districts must ensure that students are able to participate meaningfully in the mainstream educational environment. That is, they should be able to keep up with their non-ELL peers academically and participate meaningfully in essentially all aspects of the curriculum without the use of simplified English materials. The District must also monitor student performance and provide support as needed to exited students. The District's admissions that it does not monitor exited ELL students as well as the fact that so many exited ELL students are failing or are on the verge of failing academically, indicate that the District has not adequately monitored its exited students to ensure that they are able to keep up with the English-speaking peers as required by Title VI and the September 1991 memorandum.

5. Access to Advanced Courses and Gifted and Talented (GAT) Programs

Pertinent OCR Policy

According to the September 1991 Memorandum, a district may not categorically exclude ELL students from its special opportunity programs. If a district has a process for locating and identifying gifted or talented students, it must also locate and identify gifted and talented ELL students who could benefit from the program. Educational justifications for excluding ELL students from such a program should be comparable to justifications used in excluding non-ELL students.

a. New London Science and Technology Magnet High School

Investigative Findings

As noted above, at the high school level, the District operates a science and technology magnet high school - the STMHS. OCR's review indicated that the ELL enrollment from New London at the STMHS is only 5 students in the entire School, constituting less than 4% of the School's New London student population, while ELL students constitute 22.8% of the District overall. The Director of the School acknowledged that it has been difficult to recruit ELL students, in part because he does not have the resources to conduct his informational sessions for parents and students in languages other than English to attract students from families where English is not spoken at home. Additionally, there are very limited resources available to ELL students at the school. There are no SI classes offered there, and former ELL students whom OCR interviewed stated that the tutors were of limited help because they were unable to translate some of the more technical language in the science and engineering classes. OCR's review of one STMHS student's file indicated that, although he was designated as an ELL, he received no ESL or SI.

Compliance Concern

The lack of recruitment and information in a language that ELL students and their parents can understand, coupled with the lack of support and any SI classes at the STMHS, discourages ELLs from applying to the STMHS and effectively limits or denies them an equal opportunity to benefit from the programs and activities offered at the STMHS.

b. New London High School and District Elementary Schools

Investigative Findings

OCR's review also revealed that of the nine SI classes offered at NLHS, all are introductory or basic level classes. There are no SI electives, advanced, honors, or advanced placement classes offered for ELL students. Staff acknowledged that for an ELL student who is a newcomer to the High School, there is limited or very little access to advanced classes offered at the school. Staff stated that while efforts are made to place talented students in more advanced, college preparatory math classes, the classes are really designed for students who are fluent in English, because the pace of the materials covered is faster than in the SI classes.

Data provided by the District shows that during the 2009-2010 school year, there were 97 students enrolled in Advanced Placement (AP) classes at the High School, and only 2 (2%) of those students were ELLs. During the 2010-2011 school year, the numbers were similar – only 2 (2.1%) out of 94 students enrolled in AP classes were ELLs. The District stated that students are selected for AP classes based on their grades, an AP potential scale, teacher recommendations, parent recommendations, counselor recommendations and student requests. The AP potential scale is a measurement of potential success on AP tests which is based on test scores from the Preliminary Scholastic Aptitude tests (PSAT) or National Merit Scholarship Qualifying Test (NMSQT). The AP potential scales are determined based on anticipated correlations between success on the PSAT/NMSQT and the AP tests. The District acknowledged that currently, all assessments for entry into AP classes are done in English. Additionally, The District has stated to OCR that students enrolled in ESL I, II and III classes are still considered ELLs at the early stages of English language development, and are therefore not prepared to succeed in AP courses.

The director of guidance informed OCR that approximately 20 students per year get selected to take early college experience (ECE) courses at the University of Connecticut. The District noted that it uses the same criteria for AP classes to determine eligibility for the ECE program. OCR was initially informed that there were currently no ELL students in this program, however the District recently reported that one of the students in the program has a blue folder, indicating that she is an ELL student.

Additionally, the District informed OCR that each of its four elementary schools runs a School Enrichment Model Initiative (SEMI) volunteer program for students in 4th and 5th grades. According to the District, enrollment has varied between 75-85 students, and there is currently a total of 82 students enrolled in the SEMI program for the 2010-2011 school year, not one of whom is an ELL student. The District stated that the criteria for enrollment include principal and teacher recommendations, CMT test scores, Otis Lennon Student Ability Test (OLSAT) scores for verbal and non-verbal proficiency, Success for All (SFA) literacy levels (which must be above grade level), and teacher recommendations and parent nominations.

Compliance Concern

The District's processes for locating and identifying students for AP classes, ECE courses, and enrollment in the SEMI program at the four elementary schools all rely on English language

testing instruments which tend to screen out ELL students who are still learning English, and consequently limit their opportunities to enroll in AP classes, ECE courses, and the SEMI program. OCR found that ELLs were either completely unrepresented (as in the SEMI program), or significantly underrepresented (as in the ECE courses and AP classes). While fluency in English may be required for an AP course in English literature, the District's use of this criterion in determining eligibility for *all* of its advanced academic courses and programs - AP, ECE and SEMI (which include math and science classes) – has had the effect of limiting and excluding ELL students from the benefits of these programs on the basis of their national origin.

B. Whether the District discriminates against ELL parents by failing to communicate with them in a manner that provides them meaningful access to the District's programs, services and activities, in violation of Title VI.

Pertinent OCR Policy

The Department's May 1970 memorandum states that school districts have the responsibility under Title VI to adequately notify national origin-minority group parents of school activities that are called to the attention of other parents. Further, the May 1970 memorandum states that such notice, in order to be adequate, may have to be provided in a language other than English.

Executive Order Number 13166, issued in August 2000, requires OCR and other Federal agencies to ensure that recipients of Federal financial assistance provide meaningful access to their ELL applicants and beneficiaries in a manner consistent with U.S. Department of Justice guidance: "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons with Limited English Proficiency" (DOJ Guidance) issued the same day. This guidance sets forth general principles for Federal agencies to apply in determining whether recipients of Federal financial assistance are taking reasonable steps to ensure meaningful access for ELL individuals.

According to the DOJ, translations must be provided by either certified translators or by qualified bilingual individuals who are capable of performing the translations, including translating any necessary technical terms. Translators must also be trained in the role of interpreters, the ethics of providing translations, and the need to maintain confidentiality. Unless requested by the ELL, the translator may not be a family member, friend, child or community member. Depending on the circumstances, if an ELL does request that a family member, friend, child or community member provide the translation, the District is advised that it should also provide translation, to ensure that meaningful access is provided. Professional interpreters and translators are subject to specific codes of conduct and should be well-trained in the skills, ethics, and subject-matter language. Those utilizing the services of interpreters and translators should request information about certification, assessments taken, qualifications, experience, and training. Quality of interpretation should be a focus of concern for all recipients. In some instances using a professional interpreter or translator is not necessary or possible, and it may be suitable to use a bilingual staff member – but only if the bilingual staff is appropriately qualified. Assessment of ability, training on interpreter ethics and standards, and clear policies that delineate appropriate use of bilingual staff, staff or contract interpreters, and translators, will help ensure quality and effective use of resources.

Investigative Findings

OCR has identified a number of concerns with respect to communication with ELL parents. One thing OCR found was that with the exception of the Jennings School, report cards are not typically translated into languages ELL parents can understand, and ELL parents are not notified that a free translation will be provided upon request. Although the electronic version of the report cards has a drop-down menu with Spanish translations of comments, the alignment of the comments does not correlate with the English translation. Therefore teachers who cannot read and understand Spanish are unable to use the drop down menu. Teachers confirmed that they would send home comments to Spanish speaking parents in English. OCR found instances of Haitian students' report cards containing comments from a teacher that were written in Spanish, when the students' home language was Haitian Creole.

OCR also found that, while most important school-level notices and the phone-operated parent-link system are translated into Spanish, there are no translations available in other languages (except sporadically in Haitian Creole). In the files reviewed by OCR, there were many instances of critical documents not being translated into low-incidence languages or even into Spanish. These included IEPs, placement and IEP amendment consent forms, special education meeting invitations, and attendance notices. As part of a sample of files reviewed, OCR also found files containing notices that were sent home in Spanish to parents who did not speak Spanish, but rather spoke Haitian Creole.

Professional and secretarial District staff are often called upon to provide Spanish interpretations. In addition, the vast majority of the school-to-family communication in Haitian Creole is done by Haitian speaking tutors, who do not get paid for that work. While the two Haitian tutors may be proficient in English and Haitian Creole (OCR is not in a position to judge this), neither is certified to perform translations, and the District does not have any criteria for determining the qualifications of these tutors to serve as interpreters or to translate documents.

OCR learned from teacher interviews at all the District's schools that the District is not able to readily provide translation of any communications into low-incidence languages. No professional interpreters or qualified bilingual staff are available to provide translations. Teachers and administrators expressed the view that there is generally no need for professional interpreters because in most of the cases of low-incidence speakers they have been able to find a relative, community member, or neighbor to help communicate with the family. NLHS staff and community members noted that students are sometimes asked to interpret for their parents, and for matters that are not confidential, for parents of other students. While this may be an acceptable means of communicating with ELL parents if the parent has asked that the relative, community member or neighbor provide the translation, it does not ensure that the translation is sufficiently accurate to provide the ELL parent with meaningful access to the District's programs, activities or services. Additionally, there is no formal plan in place in case such an outside source is not available to provide translation into the low-incidence languages. Furthermore, this means that families may have personal information about their child discussed at school in the presence of someone who is not linguistically qualified or fluent to interpret in both languages, and may not be trustworthy or understand that they are ethically bound to keep the information confidential. This is particularly true with respect to matters concerning special education, student behavior, and discipline. Files reviewed by OCR indicate that IEP team meetings were held with ELL parents of ELL students without interpreters.

The District has also conducted multiple home language surveys in languages not spoken by the parents. Staff at NLHS said only one of the two people who fill out the HLS is fluent in Spanish. Because of her fluency, this staff person is able to ask more specific questions of Spanish-speaking family members, and the answers elicited by the other staff person might be less reliable. Because, as noted above, the HLS serves as the primary mechanism for deciding whether a student should be assessed for English proficiency, and, consequently, whether he/she will ultimately receive ELL services, it is critical that parents fully understand the questions when asked to answer them.

Compliance Concern

OCR has determined that most notices are sent home in English and Spanish and that the District has fairly consistent Spanish language translations and interpreters available. However, parental communication in languages other than Spanish is not done consistently, and is sometimes not done at all. The District has not notified parents that it will provide translation into languages other than English and Spanish, upon request. Additionally, none of the staff or tutors who provided translations and interpreter services received any training on the role of an interpreter or the ethics of interpreting or translating.

C. Whether the District discriminates against limited-English proficient students on the basis of their national origin and/or disability in the pre-referral, referral, evaluation and placement of minority students into special education programs and services in violation of Title VI or Section 504.

Pertinent OCR Policy

The regulation implementing Section 504, at 34 C.F.R. § 104.35, provides that a recipient that operates a public elementary or secondary education program shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in a regular or special education program. The May 1970 memorandum states that districts may not assign students to special education programs on the basis of criteria that essentially measure and evaluate English-language skills. Accordingly, a district must employ standards and procedures for the evaluation and placement of language-minority students that reliably identify students' educational disabilities, rather than the students' English proficiency skills.

In reviewing whether a district's special education referral and evaluation procedures are in compliance with OCR policy, OCR generally considers whether staff uses objective data and professional judgment to account for the effect of the language development and proficiency of language-minority students. If a student is not proficient in the language skills required to complete an assessment instrument, the results may not be valid. If district staff members rely primarily on invalid test data, in lieu of other sources of information about the student, the district may be in violation of Section 504.

OCR considers whether the evaluation accurately reflects a student's special education needs rather than lack of English language skills (e.g., whether persons with appropriate qualifications determine the appropriate language to be used for evaluation of ELL students; whether appropriate evaluation instruments are used; whether the evaluations of ELL students are conducted in a timely manner, as compared with their non-ELL peers; whether the evaluation

process gathers information from a variety of sources and includes persons knowledgeable of the student's language and cultural background).

OCR considered whether the District appropriately adapts its special education (SPED) pre-referral, referral, evaluation, and placement policies, procedures, and practices to ensure that national-origin minority, ELL students are not placed in SPED, or denied appropriate SPED services, because of their limited English proficiency. OCR seeks to ensure that ELL students with disabilities have access to appropriate services to meet their disability and language-related needs. We also consider whether information is considered and documented from a variety of sources, and whether placement decisions are made by a group of persons knowledgeable about the child (including persons appropriately qualified in second language learning), the meaning of the evaluation data, and the placement options.

Investigative Findings

OCR reviewed the files of approximately 10% of all of the ELL students who were also considered eligible for special education. OCR found some significant delays in identifying ELL students who have special needs. Some case files that OCR reviewed showed that more than a year had passed from the date a student was suspected of having a disability to the date that he or she was ultimately placed on an IEP and began receiving special education services. In other files, we found records indicating that teachers or others had concerns about possible special education issues, but there was no record of any follow up, or special education records of any kind.

OCR also identified a number of students through our file reviews who spoke low incidence languages (i.e. languages other than Spanish), whom the District evaluated for special education using English language assessment instruments. One Principal noted that it took more than a year to test a low-incidence student in her native language. More frequently, English language instruments were used, presumably because there were no native language instruments available, and the District had difficulty finding someone who spoke the student's native language. In a number of instances, there was conflicting information in the files about what the student's dominant language was, or there was no support for the District's conclusion that the student was dominant in English. One Haitian student was sent home notices in Spanish even though the student's HLS indicated that his home languages were French and Haitian Creole. That same student's observation form indicated that he gave single word answers in English (indicating a low level of English language development), but still noted that his dominant language was English. A similar difficulty was encountered with respect to two students whose native language was Albanian.

Several student files that OCR reviewed contained large gaps in special education records. In one file, OCR found no documentation of any evaluations or bases upon which the student was determined to have a disability. The SPED Director called the NLHS to track down the documentation; however the documentation was not in the student's cumulative folder at NLHS either.

It appears that a majority of the disabilities listed for ELL students are "speech and language disorders." In many of the folders that OCR reviewed, there was no evidence of any language dominance testing completed, and students were often assessed in English to determine whether they had a disability. In one folder of a student whose home language was listed as Spanish, but

where no language dominance testing was done and the student was assessed in English, it was noted that the student "... presents with a language disorder which is characterized by a limited receptive and expressive vocabulary. He has difficulty answering and asking questions, he uses limited syntax markers, and he uses a limited amount of words when communicating." Despite contradictory information in the file concerning the student's ability to speak and understand Spanish (the primary language spoken at home), there was no language dominance testing done, and it was assumed that the assessments conducted in English were valid.

Of particular concern were the percentages of students identified as having special needs at the various elementary schools. OCR found a large disparity between the Jennings school, with the largest population of elementary ELL students, and the other three elementary schools with much smaller numbers of ELL students. The following chart indicates the numbers and percentages of ELL students in Elementary schools broken down by school for the 2009-2010 school year:

SCHOOL	SPED/TOTAL ELL	% OF ELLS IN SPED
Jennings	32/284	11.3%
Winthrop	8/28	29%
Nathan Hale	7/28	25%
Harbor	4/14	29%

Combining the numbers for the three elementary schools other than Jennings, there were a total of 70 ELL students, of whom 19 or 27% had been identified as having a learning or other type of disability, compared with 32 out of 284, or 11.3% at the Jennings School. In March of 2011, the District submitted the most current enrollment numbers which showed Jennings to have 38 out of 263 or 14.4% of their ELL students in SPED, and the remaining three elementary schools to have 23 out of 87 or 26.4% of its ELL students in SPED. This disparity in SPED rates among ELLs at different elementary schools suggests that the evaluation and placement of ELLs in SPED is not being administered consistently.

Compliance Concern

OCR found that there have been a number of delays in evaluating and placing ELL students in SPED after a referral has been made. Some of these delays are due to the District's inability to determine what the student's native language is, and other delays have been due to the District's inability to find qualified translators or interpreters in a timely manner for low incidence language groups. These delays have resulted in lost SPED services for students, and constitute violations under Section 504 and Title VI.

OCR also found that the District relied on English language assessment instruments to determine eligibility for SPED without conducting language dominance testing of students who have indicated that their home language is a language other than English. The use of English language special education eligibility assessments for students whose primary home language is not English, and who may not be dominant in English fails to reliably identify students' educational disabilities as opposed to their English proficiency skills. As noted above, under the pertinent OCR Policy Section, if a student is not proficient in the language skills required to complete an assessment instrument, the results may not be valid. The District's reliance primarily on potentially invalid test data, in lieu of other sources of information about the student, constitutes a compliance concern under Section 504 and Title II. Additionally, OCR found that the District is not consistently applying its criteria for determining whether a student

has a disability, in the same manner at all of its elementary schools, which is resulting in a significant disparity between enrollment of ELL students in SPED at the Jennings School and the other three elementary schools in the District.

VI. CONCLUSION

The District has agreed to resolve this compliance review and has voluntarily committed to the steps outlined in the enclosed agreement. Consistent with our usual practice, OCR will monitor the District's implementation of the agreement and its compliance with Title VI and Section 504 as implicated by this compliance review.

Please be advised that this letter and the enclosed agreement cover only the issues investigated as part of this compliance review and should not be construed to address any other Title VI or Section 504 issues not investigated at this time. Letters of finding contain fact-specific investigative findings and dispositions of individual cases. They are not formal statements 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.

OCR would like to thank District staff for their cooperation during the course of this compliance review. From the inception of our review, OCR was welcomed to the District and ensured full cooperation from your staff. Dr. Shalimar Ramos Wuyke, the District's Director of Bilingual and ESL Education, Dr. Christine Carver, Assistant Superintendent, and Ms. Valerie Tamano, Manager, are deserving of a particular note of gratitude as they coordinated the bulk of OCR's onsite investigations, shepherded us from school to school, and promptly responded to our numerous data requests. We look forward to continuing to work productively with you and your staff as we monitor the District's implementation of the enclosed agreement.

If you have any questions, please feel free to contact Eric Olick, Senior Civil Rights Attorney, at (617) 289-0021 or email to: eric.lick@ed.gov, or Frederick Dow, Senior Civil Rights Investigator, at (617) 289-0025 or email to: fred.dow@ed.gov. You may also contact me at (617) 289- 0111.

Sincerely,

/s/

Thomas J. Hibino
Regional Director

Enclosure