



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 10, 2014

Dr. Francis X. Antonelli
Superintendent of Schools
Hazleton Area School District
1515 W. 23rd Street
Hazleton, PA 18202

Re: OCR compliance review no. #03-10-5002

Dear Dr. Antonelli:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed the above-referenced compliance review of the Hazleton Area School District (District). OCR initiated this review to determine whether English language learners (ELL students) in the District are denied equal educational opportunities in the District's programs and services and whether the District adequately notifies national origin minority parents and guardians of school activities that are called to the attention of other parents/guardians.

OCR has authority to conduct this compliance review under the implementing regulation of Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. Part 100, which prohibits discrimination based on race, color or national origin by recipients of Federal financial assistance from the Department. As a recipient, the District is subject to the provisions of Title VI and its implementing regulation.

In reaching a determination regarding this compliance review, OCR examined student records, District policies and procedures regarding its services for ELL students, teacher certification data, enrollment data, and other documents. OCR also conducted site visits to the District to interview administrators, teachers, and other staff, and met with parents and other members of the District community. Based on an analysis of all the information collected, OCR has determined that the District has failed to comply with the requirements of Title VI with respect to the provision of educational and related services to ELL students. Specifically, OCR found that the District does not comply with the requirements of Title VI in the following areas: identifying students who may need English language development (ELD) program services;

providing adequate staffing of its ELD program; evaluating the ELD program to determine its effectiveness; and, communicating with parents and guardians whose proficiency in English is limited. The bases for our determination are set forth below.

I. Legal Standards

OCR is responsible for enforcing Title VI, 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, and national origin by recipients of Federal financial assistance from the Department. The Title VI statute states that “no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program operated by a recipient.” The Title VI implementing regulation, at 34 C.F.R. Section 100.3(b), prohibits discriminatory acts and prohibits the use of criteria or methods of administration that have discriminatory results.

OCR also relies upon the following policy guidances:

May 1970 Memorandum. The OCR policy memorandum issued on May 25, 1970, entitled, *Identification of Discrimination and Denial of Services on the Basis of National Origin* (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 was affirmed by the U.S. Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974). 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.

1985 Policy Memorandum and 1991 Policy Update. The Departmental policy memoranda, *OCR’s Title VI Language Minority Compliance Procedures*, issued December 3, 1985 (1985 Policy Memorandum), and *Policy Update on Schools’ Obligations Towards National Origin Minority Students with Limited-English Proficiency*, issued September 27, 1991 (1991 Policy Update), set forth the standard an alternative language program must meet to comply with Title VI. These policies use the analytic framework articulated in *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). This letter will use the term “alternative language program” interchangeably with the term, “English language development program” or ELD program.

The 1985 Policy Memorandum and 1991 Policy Update specifically set forth the following issues to consider:

- (1) the adequacy of the program model;

- (2) the adequacy of the implementation of the program model; and
- (3) whether the District monitors, evaluates, and modifies its program if necessary.

In analyzing the program model, OCR considers whether the program is recognized as sound by some experts in the field or considered a legitimate experimental strategy. In analyzing the adequacy of the District's implementation of the program model, OCR examines issues such as the following:

- (a) identification and assessment of ELL students;
- (b) adequacy of staff, materials, facilities, and resources;
- (c) whether ELL students are separated from the general District school population;
- (d) the objectivity of exiting criteria;
- (e) whether ELL students receive necessary special education services or whether they are inappropriately placed in special education classes; and
- (f) whether ELL students are denied participation in gifted and talented programs or other special programs.

Concerning a district's obligations to provide effective notice to parents, the May 1970 Memorandum provides that recipients must adequately notify national origin minority group limited-English proficient parents of school activities that are called to the attention of other parents and that such notice in order to be adequate may have to be provided in a language other than English. Additionally, OCR considers the issue of communication with limited-English proficient parents in a manner consistent with Executive Order 13166, *Improving Access for Persons with Limited-English Proficiency*, issued August 11, 2000 (Executive Order 13166). The U.S. Department of Justice Guidance issued on June, 18, 2002, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited-English Proficient Persons* (DOJ Guidance), provides specific guidance about the method and manner (including translation and interpretation) for delivering information to ELL individuals in a timely and effective manner.

II. Facts and Analysis

A. General Overview

The District is located in Luzerne County in northeast Pennsylvania; it comprises the city of Hazleton and surrounding suburban and rural areas. The District has ten schools: Arthur Street Elementary School, Arthur Street Elementary Annex, Drums Elementary-Middle School, Freeland Elementary-Middle School, Hazleton Elementary-Middle School, Heights Terrace Elementary-Middle School, McAdoo-Kelayres Elementary School, Valley Elementary-Middle School, West Hazleton Elementary-Middle School, and Hazleton Area High School, which comprises three facilities: the Hazleton Area High School, the Ninth Grade Center, and the Hazleton Area Career Center.

The District's ELL student population has grown significantly, from just over 100 students in 2000 to 1,280 students in 2013. In March 2013, the District reported an enrollment of 1,280 ELL students, including 45 students who were exited from the ELL program and who were being monitored by the District. The total student enrollment at the District is 10,842 students, 39 percent of whom were Hispanic and 29 percent of whom were identified as having a primary home language other than English. The District's ELL population is mostly Spanish-speaking, with 31 students from 12 other language backgrounds, including Chinese-Mandarin, Buginese, Sandawi and Italian.

B. Prong One – Adequacy of the Alternative Language Program Model

The 1985 Policy Memorandum states that in determining whether a school district is in compliance with Title VI, OCR considers whether the District's alternative language program is likely to meet the educational needs of language-minority students effectively. The 1991 Policy Update states that a school district may demonstrate that its program is likely to be effective by showing that the educational approach used is considered sound by some experts in the field or that it is a legitimate experimental strategy. Some approaches that OCR has recognized as falling under this category include transitional bilingual education, bilingual/bicultural education, structured immersion, developmental bilingual education, and English as a Second Language (ESL). If a school district is using a different approach, it can demonstrate Title VI compliance if it can show that some experts in the field consider the approach sound or that it is considered a legitimate experimental strategy.

The District is responsible for complying with the *Luzerne Intermediate Unit 18 English as a Second Language (ESL) Program Guide* (Guide). The Guide is a general guideline applicable to all districts in the Intermediate Unit's area of responsibility. The document outlines districts' responsibilities but does not specifically state how Hazleton Area School District will carry out those responsibilities in each of the alternative language component areas. The individual responsible for the District's alternative language program is the Supervisor of Federal Programs and Grants. The District's ESL Testing Coordinator is responsible for ESL testing at registration, ACCESS test administration, and maintenance of placement forms, files of students whose primary home language is other than English (PHLOTE), and other related documents.

The District's primary methodology for English language instruction is ESL. The ESL program at all grade levels utilizes several techniques to provide content area instruction: ESL teachers providing pull-out content area instruction; regular and ESL teachers collaborating on instruction; paraprofessionals providing testing support; consultants working with the regular education classroom teachers; and sheltered instruction. At all school levels, aside from ESL pull-out sessions and the Newcomer Program, students are assigned to grade level classrooms and are taught in English by regular classroom teachers.

All teachers who provide direct ESL instruction for ELL students are certified in ESL. At the elementary and middle school levels, the ESL program model is a pull-out ESL program, where students receive intensive language instruction from an ESL teacher during a period of time when their non-ELL peers are receiving English or reading instruction. OCR found that in

practice, ELL students receive pull-out (removal from the regular classroom) or in some cases students remain in the regular classroom and receive support from an ESL teacher. Depending on the student's proficiency level, the student may receive ESL instruction daily. Some ESL teachers use two instructional programs (Read 180 and System 44) with ESL students who are at certain proficiency levels. The District also uses textbooks designed for English language learners.

At the high school level (except for the Newcomer Program), the type of ESL program model that is used is content-based ESL. Content-based ESL is a recognized alternative language service delivery model in which the use of English is adapted to students' proficiency levels and is supplemented by visual aids and manipulatives, so that language and content instruction are integrated (i.e., content instruction is provided in English). Intermediate/Advanced students are assigned an ESL class based upon their proficiency level. Entering or beginning ELL students may be assigned to the Newcomer Program if they meet the eligibility criteria set forth below.

The Newcomer Program, initiated in the 2007-2008 school year, is housed at the Ninth Grade Center, and serves up to 40 ELL students in grades nine through twelve. This program uses sheltered instruction, which integrates language and content instruction. To be eligible for this program, the student must have been living in the United States for less than a year and have limited or no English proficiency. Students in the Newcomer Program move to the high school by the start of the school year following their initial enrollment in the program. At the time of OCR's onsite, the Newcomer Program was divided into two classes according to proficiency level (limited English proficiency and no English proficiency). In other years, the District arranged the program in two classes based on grade level, grades nine and ten as one class and grades eleven and twelve as the second class.

Prong One Conclusion

OCR finds that the District's chosen instructional models for providing English language instruction—ESL with some pull-out instruction in some content areas (all grade levels), and a program of sheltered instruction (Newcomer Program)—meets the first prong of the *Castañeda* standard.

C. *Prong Two – Adequacy of the Implementation of the Alternative Language Program*

The second prong of OCR's analysis requires recipients to effectively implement the program model they adopted. The primary elements of an alternative language program are: (1) identification and assessment of ELL students; (2) staffing; (3) instructional materials, facilities, and peer integration; (4) access to special programs and special education; and (5) exiting criteria and monitoring of exited students.

Identification and Assessment of ELL Students

A school district must 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 limited-English proficiency are receiving alternative language services. To carry out this obligation, school districts must identify, upon enrollment in the district, each national origin language minority PHLOTE student, in kindergarten through grade twelve, who has a primary or home language other than English. All identified PHLOTE students must be assessed in a timely manner, using objective assessment instruments to determine whether students require alternative language services because of limited proficiency in reading, writing, speaking, or understanding the English language. The criteria used to determine eligibility for ELL placement must be objective and must ensure that all students who, because of limited-English proficiency, are not able to effectively participate in a school district's regular program, receive alternative language program services. OCR does not prescribe particular assessments, but school districts must assess proficiency in English in all four language domains (reading, writing, speaking, and comprehension). See the 1985 Policy Memorandum.

The method the District uses to identify PHLOTE students is a home language survey (HLS), which is completed by a parent or guardian during the registration and enrollment process. The District requires that parents register new students in person at the main administration building. The District has a registration packet that is available in English and Spanish, and the HLS is a mandatory part of that package. The survey asks the following questions:

What is/was the student's first language?

*Does the student speak a language(s) other than English?
If yes, specify the language(s).*

What language(s) is/are spoken daily in your home?

*Has the student attended any United States School in any 3 years during his/her lifetime?
If yes, complete the following: (Name of School, State, and Dates Attended)*

If the HLS indicates that English is the student's first language, the student is interviewed, usually by the ESL testing coordinator, and if she confirms that the student is "dominant in English," an *ESL Department Non-Placement Verification* form is filled out and no testing is done. For students whose first language is not English, or who is otherwise a PHLOTE student, the District uses the WIDA-Access Placement Test (W-APT) to determine the student's level of proficiency. According to the test publisher's website, the W-APT is a test used to assist in identification and placement of ELL students, and assesses students in each of the four language domains. Based on the results of the W-APT, the District assigns the student an English language proficiency level as follows: 1 (Entering), 2 (Beginning), 3 (Developing), 4 (Expanding), 5 (Bridging), or 6 (Reaching).

If the assessment indicates that the student needs ESL services, a profile form is completed and filed in the student's cumulative folder. The student is assigned to ESL, and the ESL teacher at

the student's receiving school is notified of the new student. The student's parent or guardian is notified that the student has been assigned to ESL; this notification is available in Spanish.

The *ESL Department Non-Placement Verification* form describes six possible reasons for "non-placement," including a score of Fluent English Proficient on the assessment. However, other reasons noted on the form indicated that a determination could be made without a full language proficiency assessment in the four language domains:

1. "He/She has been interviewed to determine that English is his/her first language."
2. "He/She has met the criteria for non-placement in ESL."
3. "Special Education takes precedence because his/her disability precludes meaningful instruction in ESL."

OCR confirmed that the District's process allows some PHLOTE students to be assigned to regular classes without being assessed for their English language proficiency. For example, when a student "has met the criteria for non-placement in ESL," a PHLOTE student may be exempt from assessment if he or she meets two of the three following criteria: 1) final grades of B or better in core subject areas (Mathematics, Language Arts, Science, and Social Studies); 2) scores in district-wide assessments that are comparable to the Basic performance level on the PSSA; and 3) scores of Basic in Reading, Writing, and Math on the PSSA or an equivalent assessment from another state.

OCR found that some PHLOTE students who did not meet the above criteria were exempted from the W-APT assessment. OCR's review of the files of 324 PHLOTE students revealed that 102 PHLOTE students were exempted from meeting the criteria for non-placement in ESL, but twelve of these students lacked the grades required by the criteria. Several students had grades of F, D, or both in content areas. In addition, grade information was not made available in the files of 17 of the 102 students who were exempted.

The District reported that parents in Pennsylvania are not permitted to decide whether their child is assigned to ESL unless they maintain that the instruction conflicts with the family's religious beliefs.¹ Despite this, some teachers stated that some parents were able to object to an ESL assignment.

Accordingly, OCR concludes that the District has failed to ensure that each student identified as a PHLOTE student is assessed for English language proficiency in each of the four language domains.

Adequacy of Staff Resources

School districts have an obligation to provide the staff necessary to implement their chosen program properly within a reasonable period of time. When formal qualifications have been

¹The District informed OCR that there was only one student whose family had requested an exemption based on religious beliefs.

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

The district should ascertain that teachers who use the ESL methodology have been adequately trained. This training can take the form of in-service training, formal college coursework, or a combination of the two. A district should be able to show that it has determined that its teachers have mastered the skills necessary to teach effectively in a program for ELL students and the teacher's classroom performance should be evaluated by someone familiar with the method being used. See OCR's 1991 Policy Update.

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

The District's Supervisor of Federal Programs and Grants oversees its ESL program. The District also has a Testing Coordinator, who works with students and parents during registration and assessment for language proficiency. During the 2009–2010 school year, the District staffed its program with 24 ESL teachers as follows:

1. Arthur Street Elementary (90 ELL students); two ESL teachers: one with four years of experience, four years in the English language development (ELD) Program; and one with 34 years of experience, four years in ELD Program.
2. Hazleton Elementary-Middle School (180 ELL students); three ESL teachers: one with three years of experience, three years in ELD Program; one with 20 years of experience, seven years in ELD Program; and one with 15 years of experience, one year in ELD Program.
3. McAdoo Elementary School (17 ELL students); one ESL teacher with five years of experience, five years in ELD Program.
4. West Hazleton Elementary-Middle School (164 ELL students); three ESL teachers: one with four years of experience, four years in ELD Program; one with six years of experience, six years in ELD Program; and one with 22 years of experience, seven years in ELD Program.
5. One teacher for three schools:

Drums Elementary-Middle School (six ELL students);
Freeland Elementary-Middle School (eleven ELL students);
Valley Elementary-Middle School (15 ELL students).

The teacher has five years of experience, five years in ELD Program.

6. Heights Terrace Elementary-Middle School (194 ELL students); five ESL teachers: one with one year of experience, one year in ELD Program; one with four years of experience, two years in ELD Program; one with 26 years of experience, nine years in ELD Program; one with five years of experience, two years in ELD Program; and one with four years of experience, four years in ELD Program.
7. Ninth Grade Center (95 ELL students); four ESL teachers: one with 23 years of experience, seven years in ELD Program; one with ten years of experience, five years in ELD Program; one with six years of experience, six years in ELD Program; and one with nine years of experience, five years in ELD Program.
8. Hazleton Area High School (238 ELL students); five ESL teachers: one with one year of experience, one year in ELD Program; one with 13 years of experience, seven years in ELD Program; one with four years of experience, two years in ELD Program; one with eight years of experience, eight years in ELD Program; and one with four years of experience, four years in ELD Program.

Copies of the professional certificates were provided for all ESL teachers noted above, which indicated Pennsylvania state certification as a Program Specialist-ESL. All certificates also showed some form of instructional certification. OCR found that three schools shared a single itinerant ESL teacher, meaning that the teacher traveled to these schools to provide ESL services at various times during the day or week.

The District also employs paraprofessionals at each of the three facilities that comprise the Hazleton Area High School: Hazleton Area High School, Hazleton Area Career Center and the Ninth Grade Center. These paraprofessionals provide testing support and classroom support. Another kind of paraprofessional employed by the District is the bilingual community liaison, who is required to be fluent in Spanish and English. At the time of OCR's on-sites, the liaisons were based in the front offices of four District schools with high ELL enrollments: Hazleton Elementary-Middle School, Heights Terrace Elementary-Middle, West Hazleton Elementary-Middle School, and Hazleton Area High School (including the Ninth Grade Center). Their services are also shared with the other schools that have low ELL enrollment. In those schools, services are provided based on the availability of a liaison. Many teachers referred to their building's "translator," a reference to the liaison. The District represented to OCR that the liaisons were interpreters.

With regard to instruction provided in regular education settings, ESL teachers advise content area teachers on modifications that can be made for ELL students. The most widely-reported modification provided to ELL students is a reduction in the number of answer choices on multiple choice questions (e.g., from four answer choices to two). This modification is consistent with the advice provided by a consultant hired by the District. OCR also received

evidence indicating that, prior to the 2009-2010 school year, ESL students were graded on a satisfactory/unsatisfactory scale. The Curriculum and Instruction Committee, following guidance from the Pennsylvania Department of Education (PDE), recommended changing to numerical grading for all ELL students in grades K–12. The District provided information demonstrating that there are grading procedures for ESL students, and training was provided to teachers concerning this issue. Teachers are expected to determine grades after consulting the classroom formative framework outlined in PDE’s *English Language Proficiency Standards*, which sets forth performance expectations in content areas for each language domain, by grade level and ELL proficiency level.

OCR found that the District conducts several evaluations of its teaching staff members throughout the year. These include formal evaluations, as required by the state of Pennsylvania, along with administrative “walk through” evaluations, which occur on a regular basis. OCR also noted that building principals received training in ESL methods. Several principals noted their participation in training sessions conducted by the District consultant during the 2010-11 school year. Others stated that they participated in ongoing training sessions, formal and informal, provided by ESL staff members and ESL program administrators.

The District reported that the daily ESL instructional hours that ELL students receive is based upon their language proficiency level, as follows:

Proficiency Level	Daily ESL Hours	Classes/Periods (by grade level)
1 (Entering)	2 hours/periods daily	1-6: English & Reading 7-12: English & one elective ESL class
2 (Beginning)	2 hours/periods daily	1-6: English & Reading 7-12: English & one elective ESL class
3 (Developing)	1-2 hours/periods daily	1-6: English and/or Reading 7-12: English and/or one elective ESL class
4 (Expanding)	1 hour/period daily	1-6: English or Reading 7-12: English or elective ESL class
5 (Bridging)	Up to 1 hour/period or support based on need	1-6: English or Reading 7-12: English or elective ESL class

In practice, ESL service amounts did not comport with these standards for many ELL students. The issue appears to affect mainly ESL students in grades K to 6. OCR identified the following cases where a total of 241 students received amounts of ESL service that were significantly lower compared to what the District has determined is necessary to properly implement its program:

- 82 students in grades Kindergarten through 2 at the Arthur Street Elementary School (grades K to 2);
- 87 students in grades 3 through 6 at Hazleton Elementary-Middle School;
- 36 students in grades Kindergarten through 2 at Heights Terrace Elementary-Middle School; and
- 36 students in grades 5 and 6 at West Hazleton Elementary-Middle School.

Students in grades 7 through 12 received the appropriate amount of ESL services due to the fact that they were on block schedules, which allows for students to receive the equivalent of two periods (or 86 minutes) of ESL per day. However, the District did not have adequate staffing configuration to provide the instructional time required to implement its program for 241 elementary school ESL students.

Instructional Materials and Facilities

In order to ensure that ELD services are delivered effectively, districts must provide adequate resources, such as instructional materials and equipment, in accordance with the requirements of the program. These resources must be made available in a timely manner to staff persons providing ELD services. The resources must also be consistent with the program design and appropriate for student needs to ensure that the program has a realistic chance of success.

The instructional materials used by ESL teachers include textbooks, workbooks, computer applications for teaching ESL, intervention kits, and phonics libraries. Most staff reported satisfaction with the quantity, quality, and appropriateness of the instructional materials.

OCR found that some classrooms used for ESL classes are smaller when compared to non-ESL classrooms, but that the ESL classrooms were appropriate for the number of students in the ESL classes.

Peer Integration

Under OCR policy, ELL students may not be segregated from their non-ELL peers except to the extent educationally justified to meet the recipient's stated goals for the alternative program. OCR's inquiry in this area focuses on whether the school district has carried out its chosen program in the least segregated manner consistent with achieving its stated goals. See the 1991 Policy Update.

OCR found no evidence that ELL students were isolated from their non-ELL peers, except for ESL classes and some pull-out instruction. Additionally, attendance at the Newcomer Center is of limited duration, and students move to the high school ESL classes the following year. Given the nature of the District's program, in which ELL students are in regular classrooms during most or all of the school day, and most receive ESL instruction for two periods/hours a day or less, the District does not segregate the ELL students more than is educationally justified. OCR

found no evidence that ELL students are being unnecessarily segregated from other students on the basis of their limited English proficiency.

Access to Special Education

OCR investigates the placement of ELL students into special education programs where there are indications that ELL students may be inappropriately placed in such programs, or where special education programs provided to ELL students do not address their inability to read, write, speak or understand English. In addition, OCR determines whether recipients have policies of refusing to provide both alternative language services and special education to students who need them.

When a District student is referred for special education, information about the student is first collected through a Student Referral/Data Collection form and then submitted to the District's Office of Special Education. This form is comprehensive and seeks information, including the following that relate specifically to ELL students:

- Language spoken by the family and language to be used for written communication;
- Whether the referral was made by an ESL teacher;
- Whether the student has limited English proficiency; and
- Whether the student receives ESL services, and if so, ESL proficiency level, length of time in ESL, ESL progress, strengths, and weaknesses, and evidence that language proficiency is not a primary factor in the student's academic progress in regular education.

During special education evaluation of ELL students, the District employs non-verbal testing and tests in other languages, if available. If a curriculum based evaluation is needed, an interpreter will be used. Tests may also be read aloud, if the testing protocols allow, and the District indicated that it would contract for that service if needed. OCR noted that one of the District's ESL teachers was also a qualified special education teacher.

A number of forms and documents related to special education were available in Spanish, including: Procedural Safeguards Notice and cover letter; Permission to Evaluate Consent form; Permission to Reevaluate Consent form; Evaluation Report; Invitation to Participate in the IEP Team Meeting; Notice of Recommended Educational Placement/Prior Written Notice; Agreement to Waive Reevaluation; Communication Plan for a Child who is Deaf or Hard of Hearing; Summary of Academic Achievement and Functional Performance; and the Individualized Education Program (IEP). If an ELL student qualifies for an IEP, the ESL service is noted in the "Specially Designed Instruction" section of the IEP.

During the course of this review, however, several teachers expressed a belief that there was an informal rule that ELL students could not be evaluated for special education services until they had been in the District for at least one year. OCR was informed of one ELL student with Down syndrome who was not placed in special education because staff members believed there was such a "waiting period" requirement. OCR was also told that the consultant visited

the District during the “waiting period” and the matter was corrected with her involvement. OCR did not confirm any other such instances in reviewing files, data from the District, or witness interviews.

The Director of Special Education stated that, as with any student, behavioral or academic difficulties in the classroom are generally addressed for 60 days through the Response to Intervention (RTI) process (in grades K-2) or a Child Study Team (CST) up to grade 6, whereas older students are more likely to go directly to evaluation. The District maintains that it honors and processes any parent requests for an evaluation. The District provided examples of written requests from parents requesting special education evaluation; one of the requests was from a parent who specifically noted that she needed a Spanish interpreter.

During the 2009-10 school year, 11.9% of the total non-ELL student population at the District received special education services. One hundred and fifty-one ELL students, or 12.2% of the ELL student population, were identified as receiving special education services. The number and percentage of ELL students who receive special education compared to non-ELL students who receive special education is not statistically significant.

OCR also reviewed a sample of ELL student IEPs. In each case, the IEP reflected the involvement of the ESL teacher as a member of the IEP team, included reports or specific observations from the ESL teacher as part of the information collected to establish the student’s present level of academic achievement and functional performance, and noted ESL instruction as part of the program modifications and specifically designed instruction that the student will receive.

OCR’s investigation did not find a compliance concern with respect to the testing. For ELL students, the District employs non-verbal testing and tests in other languages, if available. If a curriculum based evaluation is needed, the District uses an interpreter. Tests are also administered orally, if the testing protocols allow.

OCR also found that ESL staff members are involved in developing and implementing IEPs, and noted that this is an area where translated forms are readily available.

In summary, the District has procedures and practices in place to take language proficiency into account when making evaluation and placement decisions regarding ELL students who may require special education services. The District is also providing both ELL and special education services to students who require both services. Accordingly, OCR finds that the District is in compliance with regard to ELL student access to special education services.

Whether ELL Students are Denied Access to Special Programs and Extra-curricular Activities

If a district has a process for identifying gifted and talented non-ELL students, it must also identify gifted and talented ELL students, and provide equal opportunity for ELL students to participate in gifted and talented programs, as well as nonacademic and extracurricular

activities. Unless the particular gifted and talented program or program component requires proficiency in English language skills for meaningful participation, the recipient must ensure that evaluation and testing procedures do not screen out ELL students because of their limited English proficiency. To the extent feasible, placement tests should not be of a type that the student's limited proficiency in English prevents the student from qualifying for a program for which the student would be otherwise qualified. ELL students cannot be categorically excluded from gifted and talented or other specialized programs, such as advanced placement (AP) courses. See the 1991 Policy Update.

The District offers a gifted program at each school level (elementary, middle and high school). The 2011 Civil Rights Data Collection indicates that, as of fall 2011, 226 students participated in the District's gifted program overall, none of whom were ELL. The gifted program is a pull-out program, usually two sessions a week. Activities in the District's gifted program cover a wide range of topics and require students to respond and/or exhibit their work in a variety of learning modalities. Some examples include: creating print advertisements for favorite books; bridge building; drawing endangered animals; solar car STEM project; mathematics competitions; creating models with K'Nex; producing author/character studies; using SketchUp, a 3-D drafting tool to create architectural designs; developing experiments to simulate zero gravity; recycling projects; and numerous creative writing projects and competitions. The Director of Special Education informed OCR that English language ability should not affect or impact a student's ability to access the gifted curriculum and participate meaningfully in activities.

According to the District's written guidance, the process for gifted referral and evaluation requires that a student be recommended for the program by a teacher or parent. Teachers and administrators reported that referrals are based on PSSA scores, teacher recommendations and parent requests. However, many teachers stated that giftedness could not be assessed reliably until English proficiency is reached.

The District uses the following assessments in determining eligibility for the gifted program: the Kaufman Brief Intelligence Test (KBIT), on which the student must score 125 or higher; an achievement test, such as the Kaufmann Test of Educational Achievement (K-TEA) or the Wide Range Achievement Test (WRAT) on which the student must score in the 93rd percentile or above in either Math or Reading with no lower than 90th percentile in either one; and the student must score at the advanced level on the PSSA in both Math and Reading. A student profile is developed, which includes a teacher checklist, report card grades, parent interview, and other information such as learning strengths and hobbies or interests. A school psychologist will administer the Weschler Intelligence Scale (WISC) on which the student must obtain a full-scale score of 130 or above. A gifted screening interview is conducted by the gifted teacher and a gifted written report (GWR) is developed by the school psychologist.

The District reported that the testing for the program can be non-verbal, but it is unclear as to whether next-step testing with the school psychologist is different for ELL students. The District's Director of Special Education informed OCR that the District does not have

assessments in foreign language. The Director also stated that the ability to assess “nonspeakers” for gifted support depends on the student’s level of ESL and how long the student has been in the country. He explained that the only standardized measure currently available for a certified school psychologist in the United States is the Spanish version of the WISC IV, but the school psychologist who administers the assessment must be a fluent or native speaker of Spanish. The measure also requires that the student be in the United States for 3 years, according to its norms. Therefore, assessing the IQ of a student who has not progressed past level 1 of ESL or who has only recently entered the United States would be invalid by the District’s current measures.

OCR also reviewed the matrices used by District staff in determining whether a student meets the gifted education requirements. Each matrix reflects that a heavier weight is given to the student’s IQ score, but the matrices also demonstrate that other criteria, including parent input, teacher input, and test scores, incorporate measures that do not depend as much on a student’s English language proficiency.

During the course of the 2011–2012 school year, three ELL students were referred and found eligible for gifted education. Overall, the Director noted that enrollment in the gifted program decreased by thirty students from the prior year, and the District has hired a school psychologist to visit all of the schools to identify additional potential gifted students. The Director stated that any student doing high-level work in the classroom should be considered for a referral to the gifted program, including ELL students.

At the high school level, the District offers AP courses and honors courses. The honors courses are English I-IV; Civics; U.S. History I, II; U.S. Government; Economics; Algebra I, II; Plane Geometry; Probability and Statistics; Calculus I, II; Trigonometry; Pre-Calculus; Biology A, B; Biology II, III; Engineering I, II; Chemistry A, B; Chemistry II, III; French I-V; German I-V; Spanish I-V; Italian I-II. The high school’s AP courses are English; U.S. History; Calculus; Chemistry; Biology. The District’s Course of Studies, which is available in Spanish, specifically states that in order to enroll in an AP or honors course, students must have a score of 93 or better in a pre-requisite course or have the approval of the classroom teacher. OCR confirmed that 16 ELL students took at least one honors course during the 2011-12 school year. Witnesses identified several potential barriers to ELL student participation in AP courses, including scheduling of ESL classes which may not permit time to also enroll in the pre-requisite and AP course. Students who take an AP or honors course are required to finish it to completion. AP courses also require a \$90 fee for the AP test, which is due prior to the first day of class.

OCR found only sporadic participation by ELL students in extracurricular activities. For example, based on rosters supplied by the District, out of 909 total participants in clubs at the high school level, 17 were noted as ELL students. Likewise, out of 529 total participants in high school sports, 9 were noted as ELL students. Teachers reported that a lack of transportation was an issue, as well as heightened responsibilities at home for ELL students. Nevertheless, OCR found no policies or practices that served to bar ELL students from consideration for

extracurricular activities, and we found no extracurricular activity in which participation was based upon English language proficiency.

Based on the foregoing, OCR finds that ELL students have equal opportunities to participate in special programs and extracurricular activities.

Exiting Criteria and Monitoring of Exited Students

A recipient must exit an ELL student from an alternative language program only after determining through objective measures that the student is sufficiently proficient in speaking, reading, writing, and understanding the English language to participate effectively in the school district's regular education program. Exited students must be monitored for a reasonable time period to ensure that they are not in need of additional alternative language services.

Generally, a recipient determines criteria for exiting students from an alternative language program consistent with the following standards. First, exit criteria should be based on objective standards, such as standardized test scores, and the school district should be able to explain why it has decided that students meeting those standards will be able to participate meaningfully in the regular classroom. Second, students should not be exited from the alternative language program unless they can read, write, and comprehend English well enough to participate meaningfully in the recipient's program. Exit criteria that simply test a student's oral language skills are inadequate. Finally, alternative programs cannot be "dead end" tracks to segregate national origin minority students. See the 1991 Policy Update.

OCR found that ELL students are exited from ESL when they attain a score of 5.0 on Tier C of the WIDA ACCESS for ELLs Assessment (WIDA), score Basic or better on the PSSA, and attain grades of C or better in core subject areas or scores on District-wide assessments comparable to the Basic level of performance on the PSSA. A score of Proficient on the reading PSSA can be used along with all other required criteria to justify exit for students who achieve a composite proficiency score of 4.5 to 4.9 on WIDA ACCESS Test. The WIDA is administered once a year in March.

The District represented that exited students are monitored for two years and that this primarily occurs through collaboration between the ESL and non-ESL teachers. OCR found that the District has a monitoring procedure that is generally followed by staff members. Specifically, OCR noted evidence from the files of exited students showing that regular education classroom teachers of exited ELL students met with building ESL teachers to review each exited student's progress in the classroom, along with a consideration of whether the classroom teacher believes that the exited student needs to return to the ESL program. In its review of files of exited students OCR noted—and the District acknowledged—some deficiencies in maintaining records: one student's file indicated that only the ESL teacher initialed the form and that no grades were entered for that school year. Nevertheless, OCR generally found that data on student performance was maintained in the files and that teachers reviewed the data.

Based on the foregoing, OCR finds that the District has objective criteria for exiting students from the program, based on the student's score on the WIDA, PSSA scores, and grades. OCR also finds that the District has a reliable procedure for monitoring students once they are exited from the ESL program.

Prong Two Conclusion

OCR finds that the District does not effectively implement its chosen ESL program in the following areas: identifying students who may need program services and providing adequate staffing of its program.

D. Prong Three - Alternative Program Evaluation and Modification

The third prong of OCR's analysis requires a school district to periodically evaluate its program to determine if it is successful in providing ELL students equal educational opportunity and, if not, whether the program has been modified accordingly. OCR has interpreted Title VI as requiring that school districts do more than adopt and implement an alternative language program; districts are expected to offer programs that are successful in providing ELL students with equal education opportunities. The only way for a school district to gauge success or failure is to periodically evaluate its alternative language program evaluation and promptly address any deficiencies.

Generally, the success of a program is measured in terms of whether the program is achieving the particular goals the recipient has established for the program. If the recipient has established no particular goals, the program is successful if its participants are overcoming their language barriers sufficiently well and sufficiently promptly to participate meaningfully in the recipient's programs. If ELL students are not acquiring sufficient English language skills to allow effective participation in regular academic programs in a reasonable amount of time and in a manner equivalent to the participation of non-ELL proficient students, the school district must make appropriate modifications to its alternative program. See the 1991 Policy Update.

While the District reported that the goals of the ESL program are to facilitate student acquisition of the English language in two years and achievement of academic standards, there are no written or stated objectives in place to adequately measure or determine whether the District is meeting those two goals. Most of the teachers interviewed by OCR stated that they had never been involved or asked to participate in an evaluation of the program. Based on OCR's review, the District does not fully evaluate its ESL program on an ongoing basis.

Prong Three Conclusion

As the District does not have practices in place to evaluate its alternative language program and to address any deficiencies noted, OCR finds that the District is not in compliance with Title VI in this area.

Parent Communication

Recipients must adequately notify national origin minority group limited-English proficient parents or guardians of school activities that are called to the attention of other parents or guardians. In order to be adequate, such notice may have to be provided in a language other than English. Recipients should consider the following factors when developing policies to communicate with parents or guardians who require language assistance: 1) the number or proportion of limited-English proficient individuals likely to encounter the program; 2) the frequency with which limited-English proficient individuals come into contact with the program; 3) the nature and importance of the services provided by the program; and 4) the resources available to the recipient.

Although they cannot be expected to know of the existence of every LEP parent or guardian, schools and districts must make reasonable efforts to identify LEP parents or guardians, and to provide language assistance to these parents and guardians once identified. Such efforts to identify LEP parents/guardians may include home language surveys, interaction between parents/guardians and staff, and taking into account that LEP students also may have LEP parents or guardians. A parent or guardian's LEP status is independent of their child's proficiency in English.

Whether a parent or guardian is considered limited-English proficient may also vary with the service, benefit, or encounter at issue. For example, a parent or guardian may have sufficient English language skills to communicate basic information, but may require simultaneous interpretation for matters such as a disciplinary hearing where various witnesses will be called, or an individualized education program (IEP) meeting where complex and technical information regarding their child's disability is discussed.

In addition, a parent or guardian does not have to be of limited proficiency in speaking, reading, writing, and comprehending English in order to be limited-English proficient. For example, a parent or guardian may be a fairly fluent reader of written English, but need assistance in understanding and communicating spoken English. A school or district that is not providing interpreter assistance at a parent/teacher conference to a limited-English proficient parent or guardian who reads but does not understand spoken English may be in violation of Title VI's prohibition of excluding—on the grounds of national origin—persons from participating in, denying the benefits of, or otherwise subjecting to discrimination under a program receiving Federal financial assistance.

It is important for a district to let LEP parents and guardians know, in a language they understand, that language assistance is available and is free of charge. OCR expects districts to provide language assistance for LEP parents and guardians effectively, with competent staff, or competent outside resources. Districts also should ensure that interpreters are trained on the

role of an interpreter/translator, the ethics of interpreting and translating, and the need to maintain confidentiality. The use of family members, friends, and children to provide language assistance raises concerns about confidentiality, privacy, quality assurance, and conflicts of interest; for these and other reasons, children should not be used to interpret or translate.

As noted earlier, OCR found that, based on the size of the ELL enrollment, the District assigned bilingual community liaisons to schools with the largest ELL student populations. OCR found that the liaisons served as translators (for documents) and interpreters (for meetings and telephone calls) and assisted students, teachers, parents, and guardians throughout the school day and on occasion, in the evening. The liaisons also provide interpreter services at all relevant special education, gifted, and intervention planning team meetings, as appropriate, for parents and guardians to fully participate in such meetings. Several staff reported delays in getting the language assistance needed to communicate with parents or guardians, as well as the need for more bilingual community liaisons. The District maintained that its telephone translation service (the CyraCom, or “blue” phone) could be used for languages other than Spanish. The CyraCom service can be used to translate over 200 languages, including most, but not all, of the low incidence languages² among the District’s PHLOTE population. OCR did not find evidence of incidents where parents or guardians from low incidence language backgrounds were denied communication assistance in a language they can understand.

The District had no written procedures to provide guidance regarding how to secure an interpreter or to request translation of a document. OCR also found that there was no consistently used method to inform teachers that a particular parent or guardian needed to be communicated with in another language and when a teacher should expect the need for an interpreter. At some schools, the emergency card on file indicated a need for assistance in another language. Despite this, teachers most often reported asking students if their parent needed to be communicated with in Spanish or teachers used trial and error, placing a call and waiting for an indication that the parent or guardian understood what was being said. Teachers also reported that they used the translator telephone service to communicate with Spanish-speaking parents or guardians, but the District did not report any procedures for how communication could be initiated by limited-English parents or guardians.

OCR did not find evidence that the liaisons were professionally trained interpreters or that their interpreting skills were evaluated outside of their job interview process. Furthermore, two liaisons noted that they received no professional development. The District did not report that liaisons were supervised by staff who had the ability to read, write, or understand Spanish. District staff also stated that they sometimes communicated by finding someone other than a District liaison, generally a child or relative, who can interpret. OCR also noted that interpreters were not consistently provided for large meetings. A member of a local community organization reported to OCR that one of its members volunteered to provide ad hoc interpreting during a school orientation meeting for parents at Arthur Street Elementary School prior to the start of the 2010-11 school year, because the District did not provide any interpreting or translation services for parents at the meeting.

² The District’s low incidence languages that the CyraCom service cannot translate are Buginese and Sandawi.

With regard to the translation of documents, the District reported that it utilizes TransACT, a service that is funded by the Pennsylvania Department of Education, which provides access to parent notifications translated in over 20 different languages, including Spanish. For the translation of technical documents, such as an Individualized Education Program or the District's enrollment packet, the District reports that it retains the services of CyraCom.

The District provided a notice in Spanish informing parents and guardians that student handbooks are available in Spanish, but this was only referred to three elementary schools (Heights Terrace, Hazleton and West Hazleton). The District had, from the home language survey, the names of all parents or guardians at these three schools who needed assistance due to limited English proficiency. OCR found no other student handbooks that had been translated for students at other schools. The District translated some flyers and a few forms used routinely, and it disseminated a written Spanish language dress code policy.

OCR also found that the District requires parents and guardians to sign a "School Policies Acknowledgement" form. The acknowledgement is in English: "WE HAVE READ AND UNDERSTAND THE ENCLOSED POLICIES. IF A PROBLEM DEVELOPS, WE ARE WILLING TO COOPERATE WITH THE SCHOOL." This packet attaches a bilingual version of the dress code, and several policies in English only: the attendance policy, Board Policy No. 222: Tobacco Use, Board Policy No. 227: Drug Awareness, Board Policy No. 815: Acceptable Use of Internet, Board Policy No. 233: Suspension and Expulsion, and Board Policy No. 810: Transportation. The suspension and expulsion policy (No. 233), while available in Spanish, incorporates by reference at least nine other Board policies, only one of which is also available in a Spanish translation. OCR also found that under the policies referenced above, a student could be suspended, expelled or referred to the police.

The District's website includes a translator function that clearly reflects choices for translation from English into Spanish, Arabic, Chinese (Simplified), Chinese (Traditional), French, German, Italian, Japanese, Korean, Portuguese, and Russian. The website also translates downloadable items (for example, Word or Adobe Acrobat files). During the investigation, the District adopted an Internet-based information system for parents and students, known as PowerSchool, which provides parents with information on grades and attendance. Instructions for using PowerSchool are on the District's website in both English and Spanish.

Based on the foregoing, OCR finds that the District does not meet the requirements of Title VI with regard to its communication with limited-English proficient parents and guardians. The District did not appropriately identify LEP parents and provide them meaningful access to information according to their needs. The District did not have an adequate process for ensuring that interpreters/translators were available when needed, and did not have a means to ensure that those available were sufficiently skilled and adequately trained. The District failed to provide notification to limited-English proficient parents or guardians regarding available translation and interpreter services or how to request the same. The District likewise failed to provide written information in Spanish for programs or activities in its program that large numbers of limited-English proficient parents or guardians were very likely to encounter

(e.g., handbooks, orientation sessions) and for other important documents, such as the student code of conduct.

III. Summary and Conclusions

OCR concludes that the District does not consistently identify students whose primary home language is other than English, provide adequate staffing of its program, evaluate the program to determine its effectiveness, and effectively communicate with limited English proficient parents and guardians.

IV. Resolution Agreement

In order to address the violations identified above, the District entered into a Resolution Agreement with OCR, a copy of which is enclosed herewith. When fully implemented, the Resolution Agreement will correct the identified violations. OCR will monitor the District's implementation of the Resolution Agreement to ensure the District's compliance with Title VI.

Specifically, the Agreement requires the District to:

Ensure that any PHLOTE student will be promptly assessed for English language proficiency in the four language domains to determine eligibility for placement in an English language development program;

Assess PHLOTE students who were improperly exempted from language proficiency assessment to determine whether they may be eligible to receive ESL services;

Ensure that ELL students receive English language development program services in instructional settings that are comparable to those made available to non-ELL students;

Establish written, measureable goals for language acquisition for all students in the English language development program;

Establish written, measurable goals for content area achievement for all students in the English language development program;

Provide language services to students whose parents/guardians have declined or opted out of the English language development program;

Ensure that there are a sufficient number of certified ESL teachers to implement its English language development program;

Identify and implement criteria that it will use to determine when an ELL student has obtained sufficient proficiency in English to exit the alternative language program;

Identify any students who have exited the alternative language program during the 2010-2011 and 2011-2012 school years and who suffered any academic deficiencies, and take appropriate steps to remediate such academic deficiencies;

Conduct training for all teachers concerning the policies and procedures for the monitoring of students exited from the ELL program.

Conduct a comprehensive evaluation of the English language development program at the elementary, middle and high school levels (including the Ninth Grade Center and the Hazleton Area Career Center) to determine the effectiveness of the English language development program and make modifications to address any areas where it is not meeting its goals;

Develop and implement policies and procedures to ensure that national origin minority LEP parents/guardians are notified, in a language they understand, of information and matters that are called to the attention of other parents;

Provide training to appropriate staff on procedures for identifying language-minority parents/guardians and on policies and procedures for providing language assistance to language minority parents; and

Revise and disseminate its Notice of Non-discrimination for students, parents/guardians, employees and others.

Based on the commitments the District has made in the Agreement, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The District has agreed to provide data and other information to demonstrate implementation of the Agreement in a timely manner and in accordance with the reporting requirements of the Agreement. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Title VI.

This letter sets forth OCR's determination in an individual OCR compliance review. 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 the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated in the investigation of a compliance review. If this happens, the individual may file a complaint alleging such treatment.

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

OCR appreciates the courtesy and cooperation shown by your staff during the investigation and resolution of these matters. We thank you and all District administrators and staff who worked with OCR throughout the course of the compliance review. If you have any questions or concerns about the resolution of this proactive compliance review, please contact Team Leader Melissa Corbin, at 215-656-8526 or Melissa.corbin@ed.gov.

Very truly yours,

/s/

Wendella P. Fox
Director
Philadelphia office

Enclosure