

## Resolution Agreement

### Salt Lake City School District OCR Case Number 08-16-1193

In order to resolve the issue investigated in Case Number 08-16-1193 filed with the U.S. Department of Education, Office for Civil Rights (OCR) against Salt Lake City School District (District) pursuant to Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 Code of Federal Regulations Part 100, Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act and its implementing regulation at 28 C.F.R. Part 35, the District agrees to take the actions outlined in this Resolution Agreement (Agreement).

Prior to OCR's completion of its investigation and before OCR had made any findings, the District indicated its desire to voluntarily enter into an agreement to resolve a potential compliance issue relating to Title VI, Section 504, and Title II that arose during the resolution of the complaint. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint allegation and issue may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the agreement's remedies align with the allegation and issue. The Agreement requirements are aligned with the identified issue and consistent with the Title VI, Section 504, and Title II regulatory requirements. The District's decision to enter into this Agreement is not an admission of liability or wrongdoing, nor shall it be construed as such.

#### **ACTIONS**

##### **A. District Policies and Procedures – English Learner (EL) Students with Disabilities.**

1. The District will revise its Districtwide special education and EL policies and procedures toward ensuring that EL students are not overrepresented in special education, and are not placed in special education solely based on language. By November 30, 2016, the District will revise its policies and procedures to:
  - a. Implement special education identification, Child Study Team pre-referral, and special education (SPED) referral processes that consistently take into consideration the linguistic and cultural background of students;
  - b. Delete the one or two year requirement before an EL student can be referred for a special education evaluation;
  - c. Ensure that current objective assessments of proficiency in English and the primary or home language are available prior to or upon referral of students with a primary or home language other than English (PHLOTE students) for testing, evaluation, or placement in special education services. The procedures will ensure that consideration of language proficiency is documented;

- d. Require testing or evaluation using only the language modalities in which the student is objectively known to be proficient, if feasible; and develop criteria for determining when a bilingual diagnostician will conduct the evaluation of EL students with potential disabilities;
- e. Provide for testing or evaluation by staff persons who are qualified to administer special education tests in the languages required (whenever appropriate). Establish objective criteria by which the District determines which staff members are qualified to administer special education testing and evaluations in languages other than English.
- f. Require that diagnostic reports for EL students include:
  - i. Analysis of the effect of linguistic and cultural factors on educational history and learning,
  - ii. Whether (and how) diagnostic instruments or procedures were altered for the student,
  - iii. Documentation of the use of translation or interpretation in the administration of diagnostic instruments or procedures, and the effect on the validity and reliability of the results;
  - iv. Evaluation of the validity and reliability of test results, considering the effect of differences in criteria related to language proficiency; and
  - v. Cross-validation of formal diagnostic measures with other data available about the student.
- g. Require that any group of persons making diagnostic or placement decisions includes at least one person who is knowledgeable about the student's culture and language, discusses and understands the effects of language and culture on the evaluation, and considers the validity and reliability determinations noted in the diagnostic report;
- h. Require that placement decisions are based on a variety of information, such as a review of existing records, the results of pre-referral interventions and curricular adaptations, work samples, formal and informal assessments, and observations.
- i. *Dual Services*. Clarify in the procedures that "special education trumps EL" is not accurate, rather EL students with disabilities participate in both English language development (ELD) instruction and special education services or related aids and services, unless it is inappropriate to provide dual services due to the documented nature of the student's disability. Ensure appropriate placement of all EL students with disabilities with qualified EL teachers who deliver ELD instruction. The procedures will be designed to ensure that all EL students with disabilities receive appropriate English language acquisition services, and will include in all EL students with disabilities files the District's documentation of placement decisions.

2. Reporting Requirement: By November 30, the District will provide OCR with its draft policies and procedures for review and approval. Within 30 days of OCR's approval, the District will adopt these policies and procedures and incorporate these into the District's special education manual and the District's EL Plan.
3. Reporting Requirement: The District will train its schools' personnel on the policies and procedures required by term A (1) of the Agreement. Within 30 days of OCR's approval of the policies and procedures, the District will submit its proposed trainer, draft training materials, list of personnel at Glendale Middle School required to receive the training, and plan for training its schools during SY 2016-17. Within 30 days of OCR's approval of the trainer and training materials, the District will provide a sign in-list of Glendale Middle School personnel who participated in the training and confirmation that all who needed the training received it.

**B. Dual Services – Glendale Middle School**

1. The District will submit a report regarding each EL student with a disability at Glendale Middle School during the 2015-2016 school year (SY) with the following information:
  - a. The name, title, and qualifications (including whether the provider has an ESL endorsement) of the primary provider of ELD instruction to the student during SY 2015-16.
  - b. State whether the EL student received the necessary minimum of 45 minutes of direct ELD instruction (or amount of direct ELD instruction required by the student's Individualized Education Program (IEP) or Section 504 Plan), and provide the amount of weekly ELD instructional time each EL student actually received.
2. For any EL student with a disability who did not receive the necessary ELD instruction from a qualified EL teacher, the District will convene a team of persons knowledgeable about the student and ELD instruction, including the students' parents, to individually assess the amount of compensatory services, if any, for each EL student and, if necessary, draft an action plan containing proposed compensatory services or remedial measures that will be offered or taken, the specific timelines for implementation, and the person(s) responsible for overseeing full and timely implementation. Should the District determine that no compensatory services are necessary, the District will provide a written explanation of the reasons for that determination, along with any supporting documentation, for OCR's review and approval.
3. Reporting Requirement: By December 23, 2016, the District will submit documentation that meets the requirements of Term B(1) and (2). For any proposed ELD compensatory services or remedial measures, the District will submit its proposed compensatory services or remedial measures to OCR for review. The District will consider and respond to any feedback from OCR with respect to the proposed compensatory services or remedial measures. After the proposed compensatory services or remedial measures are accepted, the District will provide or begin providing the compensatory services or take the remedial measures.

Within 30 days from the date of OCR's acceptance of the proposed compensatory services or remedial measures, the District will provide documentation that it has provided, or is in the process of providing, the compensatory services or remedial measures. For compensatory services and remedial measures that will occur over time, the District must submit documentation regarding the specific timelines for implementation, the person(s) responsible for overseeing full and timely implementation, and supporting documentation establishing that the compensatory services and remedial measures are being provided as specified. The case will remain in monitoring until compensatory services and remedial measures have been provided in full.

**C. Reevaluation of National Origin Minority Students Receiving Special Education Services:**

1. By March 3, 2017, the District will use the approved procedures described in Section A to ensure that EL students *already* receiving special education or related aids and services have not been placed in that program on the basis of criteria that essentially measured English-language skills.
2. The District will:
  - a. Review the initial and subsequent placement records of each EL student receiving special education services to determine whether such placement was based on test data or other diagnostic data that is unreliable or invalid because:
    - i. The student was (or is) not proficient in the language skills required for reliable and valid assessment results, or
    - ii. The procedures documented were not consistent with the safeguards and procedures in Item A for identifying EL students with disabilities.
  - b. Provide documentation that it has reviewed all evaluation records for each EL student with a disability at Glendale Middle School. The District will identify every EL student whose initial or subsequent evaluation included an instrument that required the use of an English language modality (i.e., speaking, reading, writing, or comprehension) in which the student is not proficient. Provide the name of each student.
  - c. Provide documentation that it has identified every EL student whose initial or subsequent evaluation included an instrument that was administered, in whole or in part, by a staff person(s) who was not qualified to conduct the assessment (e.g., not bilingual where the student should have been tested by a bilingual evaluator).
  - d. Document how it will ensure that staff members who evaluate EL students for special education will be knowledgeable and understanding of the cultural and linguistic background of each student. For the purposes of this item of the Agreement, evaluators include school psychologists, educational diagnosticians, and speech and language specialists.
  - e. Provide a complete re-evaluation of EL students identified because of non-compliance with Item C(2)(a)'s requirements.
  - f. Screen its files for all EL and former EL students receiving special education services or related aids and services to ensure that persons knowledgeable about second language

acquisition were included in their pre-referral and IEP/Section 504 Plan meetings. Provide OCR a list of EL and former EL students in special education for whom the District cannot establish that someone knowledgeable about second language acquisition and culture participated in the meetings. For each EL and former EL students in special education, provide a copy of the documentation that supports that language and culture were appropriately documented and considered in the placement decisions.

Whenever it cannot be determined language and culture were appropriately documented and considered in the placement decisions, the individualized education plan (IEP) team shall be reconvened to review, and modify where appropriate, the placement decisions. The District shall provide OCR copies of IEPs and other applicable documentation of those meetings.

3. The District will take steps to integrate any EL students into the regular educational environment who are found through these procedures not to qualify for special education or related aids and services. Every student who is found not to have a disability requiring special education or related aids and services will receive immediate placement in the regular education setting. For each such student inappropriately placed in special education, an education transition plan will be developed to address any necessary remedial or compensatory services. Each plan will include provisions for monitoring student performance and modifications of the plan, as needed, for a minimum of two years.
4. Reporting Requirement: By April 21, 2017, the District will provide OCR with its implementation of Item C(2) and (3) toward ensuring that EL students *already* receiving special education and related services have not been placed in that program/are not receiving those services on the basis of criteria that essentially measured English language skills. The District will fully implement this part of the Agreement, and provide OCR with its supporting documentation of implementation, by April 21, 2017.

**D. Parent Communication.**

1. The District will ensure meaningful communication of school-related matters, specifically special education related matters, with national-origin minority limited-English proficient parents and guardians (EL parents) of students enrolled at Glendale Middle School. The District will:
  - a. Develop a list of its EL parents at Glendale Middle School who require translation or interpreter services regarding special education related matters. The District will also notify its School teachers who have students whose parents are EL and are in need of communication services, staff members, and administrators of the names of their EL parents who need communication services regarding SPED matters.
  - b. Notify parents with a District or School point of contact for any questions regarding how to access interpreter services or translated documents. The notification will be provided in the language(s) understood by parents.

- c. Train appropriate Glendale Middle School staff on its policies and procedures for effectively communicating with EL parents. Training will include: (1) when and how to obtain qualified language assistance, (2) the importance of effective communication with EL individuals, (3) use of interpreters when staff receive or make calls to language-minority individuals, (4) how to work effectively with interpreters, (5) the impact of ethnic and cultural differences on effective communication, and (6) applicable record-keeping procedures and reporting requirements.
  - d. Determine the appropriate mix of interpreter and translation services it needs to communicate effectively with EL parents about special education related matters. The District will also develop criteria for determining which District documents will be translated for EL parents. The District will translate and make available written translation for appropriate distribution and will remind its School staff members that these are available and are to be used appropriately. For those languages that are less prominent or where translation is not feasible, the District will ensure that parents and students have been advised, in a language that they understand, of who to contact in the District if they need assistance in understanding notices or communicating with District staff members and appropriate District services will be provided.
  - e. Survey whether EL parents at the School have been consistently notified of SPED related matters to ensure that communication needs of the ELL parents are being timely and effectively met through appropriate use of interpreters and translators. The District will notify OCR of its results and any recommendations where needed improvements were noted.
2. Reporting Requirement: By December 23, 2016, the District will provide OCR with documentation supporting implementation of Item D.

**E. Exiting EL Programs, and Monitoring of Exited EL students at the School:**

- 1. The District will update its EL Plan regarding the exiting of EL students so that it does not include an Early Exit provision.
- 2. Reclassified (former EL) students at Glendale Middle School will be formally monitored at least once per semester for two years after exit from the ALP. Documentation for each student will be consistently maintained and address academic performance
- 3. Reporting Requirements: By November 15, 2016, the District will provide its revised EL Plan part addressing Exiting for OCR's review and approval. Within 30 days of OCR's approval of the revised policies and procedures, Glendale Middle School will provide a list of exited and monitored students, by name and grade, for school years 2015-16 and 2016-17. By January 15, 2017, and again by June 30, 2017, the District will provide documentation supporting that the exited EL students at the School were monitored for their academic performance.

**ADDITIONAL ACKNOWLEDGEMENTS**

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title VI and its implementing regulation at 34 C.F.R. Part 100, Section 504 of the Rehabilitation Act and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act at 28 C.F.R. Part 35, which were at issue in this case.

The District understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title VI and its implementing regulation at 34 C.F.R. Part 100, Section 504 of the Rehabilitation Act and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act at 28 C.F.R. Part 35, which were at issue in this case.

**For the District:**

/s/ Alexa R. Cunningham  
Dr. Alexa Cunningham  
District Superintendent

08-17-16  
Date