



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200  
SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

December 23, 2013

Wendy Gudalewicz  
Superintendent  
Cupertino Union School District  
10301 Vista Drive  
Cupertino, California 95014

(In reply, please refer to case no. 09-13-1371.)

Dear Superintendent Gudalewicz:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its resolution of the above-referenced complaint against the Cupertino Union School District (District). The complainant<sup>1</sup> alleged the following:

- A. The District treats national origin language minority students and their parents differently than other students by denying them the opportunity to attend their neighborhood attendance area schools;
- B. The District unnecessarily segregates national origin language minority students; and
- C. The District treats national origin language minority students differently than other students by placing them in combination grade classes more frequently than other students.

OCR's resolution activities were conducted under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulations. Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulations.

OCR obtained information from the District and the complainant. OCR also conducted interviews with you and reviewed documents and records submitted by the District.

Prior to completion of OCR's investigation, the District expressed an interest in resolving the complaint informally. Under OCR's complaint resolution procedures, a complaint may be resolved at any time when, before the conclusion of the investigation, the recipient expresses an interest in resolving the complaint. After discussions with OCR, the District

---

<sup>1</sup> OCR notified the District of the identity of the complainant when the investigation began. OCR is withholding the complainant's name from this letter for privacy reasons.

submitted a Resolution Agreement (Agreement) which, when implemented, will resolve the allegations of this complaint. For this reason, OCR did not complete its investigation. The applicable legal standards and the facts gathered during the partial investigation are summarized below.

The Title VI implementing regulations, at 34 C.F.R. § 100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department of Education issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11,595. The memorandum clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students. It states that school districts must take affirmative steps to address the language needs of limited English proficient students (English learners).

OCR policy interpreting Title VI and the May 25<sup>th</sup> memorandum requires school districts to select a sound educational theory for their programs for English learners, and to use practices, resources and personnel reasonably calculated to implement their educational theory. Districts have a dual responsibility to teach students English and to provide them with access to the curriculum, taking steps to ensure that students are not left with academic deficits. In addition, districts must evaluate the implementation and outcomes of their services for English learners to determine whether the services are successful in meeting these responsibilities and the program goals set by the district. If not, districts must modify the programs as necessary.

OCR's investigation showed the following:

- The District has outlined its program for English Language Learner (ELL) students in an *English Language Development Program Master Plan* (Master Plan), dated June 2012.
- The Master Plan contains an explanation of the registration and placement process, a general description of the instructional program, a section about support programs and services, a description of the program for ELL students with tables explaining the placement of ELL students at different grade levels and services, and a description of the reclassification process.
- According to the Master Plan, the English Language Development (ELD) program is housed at English Language Development Centers (ELD Centers)

located at three elementary schools and one middle school. ELL students must attend one of those ELD Centers to access the ELD program, whether or not they reside in the neighborhood where the center schools are located. Students may elect to attend their neighborhood schools, but will not receive ELD services unless that school is an ELD Center. Instead, the parent/guardian must complete a form to withdraw the ELL student from the ELD program and the student will be placed at the neighborhood school based on space available.

- The Master Plan states that Kindergarten students, regardless of ELL status, are placed at their neighborhood schools. While the Master Plan states that Kindergarten students receive 30 minutes of ELD daily, the District acknowledged that ELD services are not provided until the ELL students are in the 1st grade when they attend an ELD Center.
- According to the District, ELL students in the ELD Centers receive most of their academic instruction in separate classrooms with other ELL students. While the Master Plan states that Art, Music, and Physical Education are provided to ELL students at the elementary level, it is not clear if ELL students are combined with English only students during this time period. For the middle school level, the Master Plan states ELL students are in the “mainstream” classes for Math, Physical Education, and an elective course. OCR did not visit school sites and therefore made no findings as to whether this daily interaction with English only students was occurring.
- At the end of August 2013, the District reported there were approximately 4,200 ELL students enrolled in the District with approximately 700 ELL students enrolled at the ELD Centers.
- The District reported that students are placed in combination grade level classes (combo classes) based on the number of enrolled students at a school site, the number of enrolled student per grade level, and space availability at the site. The District reported that when classes are created, school sites review these variables and do their best to maximize staffing resources. The placement of students into the grade level classes, including combo classes, is at the discretion of the school site administration with teacher input. The District also reported that if students are good/independent workers, they will likely be placed in a combo class.
- The District reported that combo classes are used for all grade levels across the district, including at the ELD Centers. The combo classes at the ELD Centers are developed the same way as any other grade level class. ELD classes, however, are capped at 25 students. Thus, an ELD Center with a smaller enrollment will have a higher likelihood of combination grade level classes.
- At the end of August 2013, the District reported the following with regard to combo classes at the three elementary schools with ELD Centers: John Muir Elementary had two combo classes for non-ELD students and three ELD combo

classes; Nimitz Elementary had one non-ELD combo class and three ELD combo classes; DeVargas Elementary had two non-ELD combo classes and one ELD combo class.

Under Title VI standards, school districts have a dual responsibility to teach ELL students English as quickly and effectively as possible, and to provide them access to the District's core curriculum. A district need not provide the same program to ELL students at every school, as long as it adopts and implements a program for all students that meets these basic requirements.

Under some circumstances, a school district may determine that a program for a specific group of ELL students can most effectively be provided if students from a number of school attendance areas are served at a single site. For many districts, it is not feasible to offer specific types of specialized instruction, such as newcomer or dual language programs, at every district site. Where a district chooses this option, as a matter of equal treatment, ELL students may not be required to transfer away from their assigned school in order to receive appropriate educational services if non-ELL students are not required to make a similar choice.<sup>2</sup> For this reason, even when a specific program is located only at one or a few schools, a district must continue to provide services for ELL students who do not choose to transfer. While these services might not include designated classes for ELL students, they must be designed to enable all students to learn English and access the core curriculum.

OCR also recognizes that providing effective educational services to ELL students will frequently have the effect of segregating students by national origin during at least part of the school day. Such segregation does not by itself violate Title VI, as long as the district carries out its chosen program in the least segregative manner consistent with achieving its stated goals. For this reason, separation of ELL and English only students for non-academic as well as academic subjects would raise concerns under Title VI.

Prior to the completion of OCR's investigation, the District expressed to OCR its interest in reviewing and revising its ELD program and its Master Plan. In fact, the District hired a full-time Director of Instruction to oversee the ELD program, an ELD Coordinator to track data and plan professional development, and hired three ELD specialists to support teachers in meeting the needs of ELL students in the District. The District also took steps to ensure that all teachers in the District are appropriately certified to teach ELL students.

On December 13, 2013, the District voluntarily signed the attached Agreement to resolve the allegations raised in the complaint. The Agreement will require the District to develop and implement a revised Master Plan that describes its ELL program, that ensures that ELL students who chose to remain at their neighborhood schools receive ELD and effective access to core curriculum, and that provides for meaningful interaction between ELL and English only students at the ELD Centers (if they remain in operation). The

---

<sup>2</sup> In addition, in establishing a specialized program at a single site, districts must avoid any unnecessary segregation of students by race or national origin.

Agreement also provides that, if the District continues to offer instruction at the ELD Centers, it will develop criteria for placing ELL students into combo classes at those Centers. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the District failed to comply with Title VI. OCR will monitor the District's implementation of the Agreement.

OCR is closing the investigative portion of this complaint as of the date of this letter, and notifying the complainant simultaneously. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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

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

OCR would like to thank you and your staff for your cooperation in resolving this case. If you have any questions about this letter, please call Anamaria Loya at (415) 486-5404 or Kana Yang at (415) 486-5382.

Sincerely,

/s/

Zachary Pelchat  
Team Leader  
Office for Civil Rights

Enclosure