

RESOLUTION AGREEMENT

**Between the Arizona Department of Education,
the U.S. Department of Education's Office for Civil Rights (Denver), and
the U.S. Department of Justice, Civil Rights Division**

OCR Case Number 08094026

DOJ Case Number 169-8-81

BACKGROUND

- 1) The U.S. Department of Education, Office for Civil Rights (OCR), and the U.S. Department of Justice (DOJ) investigated two complaints, which were consolidated under the above-cited case numbers and filed against the Arizona Department of Education (ADE), alleging that, due to ADE's mandated change to the Home Language Survey (HLS) to a single question ("What is the primary language of the student?"), students who are English language learners (ELLs) and eligible to receive English language acquisition services are not being served, because they are not being identified. ADE acknowledges that OCR received the aforementioned complaints regarding the HLS but refutes the allegations in the complaints. Moreover, ADE's participation in this Agreement does not constitute an admission to the allegations of the complaints at issue here or any other complaint or matter being investigated by OCR or DOJ involving ADE.
- 2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. pt. 100, taken together, provide, in relevant part, that no program or activity receiving Federal financial assistance from the Department of Education may discriminate on the basis of national origin.
- 3) The Equal Educational Opportunities (EEOA), 20 U.S.C. § 1703(f), requires that state and local educational agencies take appropriate action to overcome language barriers that impede equal participation by students in the instructional program.
- 4) OCR and DOJ found that as a result of the new ADE-mandated HLS and teacher referral process, eligible ELLs are not receiving English language acquisition services or are not receiving them in a timely manner. ADE disagrees with OCR/DOJ's findings of noncompliance regarding the HLS and teacher referral process and maintains that ELL students are receiving English language acquisition services and are receiving them in a timely manner. However, ADE enters into this Agreement to voluntarily resolve this matter. ADE's participation in this Agreement does not constitute an admission to OCR/DOJ's findings of noncompliance regarding the HLS. Nor does it constitute an admission to OCR/DOJ's findings or determinations regarding any other matter involving ADE.

JURISDICTION

- 5) ADE is subject to Title VI because it receives Federal financial assistance from the Department of Education.
- 6) ADE is subject to the EEOA because ADE is a state educational agency as defined by 20 U.S.C. § 1720.

- 7) The parties to this Agreement are OCR, DOJ, and ADE. In light of this Agreement, the parties have determined that OCR Case Number 08094026 and the OCR and DOJ findings of noncompliance can be resolved through the terms of the Agreement. ADE's participation in this Agreement does not constitute an admission to OCR/DOJ's findings of noncompliance regarding the one-question HLS. Nor does it constitute an admission to OCR/DOJ's findings or determinations regarding any other matter involving ADE.
- 8) In order to resolve these complaints, the parties enter into this Agreement. In consideration of, and consistent with, the terms of this Agreement, OCR agrees to refrain from initiating an enforcement action and DOJ agrees to refrain from initiating litigation regarding areas covered in the "Remedial Action" section of this Agreement, except as provided below.

REMEDIAL ACTION

- 9) Within two weeks of executing this Agreement, ADE agrees to revoke its current HLS asking the following question: "What is the primary language of the student?"
 - a) Within two weeks of executing this Agreement, ADE agrees to reinstate its previous HLS with the following questions:
 - (1) "What is the primary language used in the home regardless of the language spoken by the student?";
 - (2) "What is the language most often spoken by the student?"; and
 - (3) "What is the language that the student first acquired?"
 - b) ADE agrees to direct Arizona LEAs that an answer of other than "English" on any one of the questions above under paragraph 9(a)(1)-(3) will trigger a timely assessment with Arizona's English Language proficiency assessment.¹ Within two weeks of executing this Agreement, ADE will (i) send the directive in Attachment A to all Arizona LEAs; (ii) revoke all policies mandating use of the current one-question HLS, including but not limited to No. Ex.-48 dated August 27, 2009; (iii) return to its previous policies that reflect the three-question HLS set forth in Attachment B and its previous practice of allowing teachers to refer students to be evaluated for English proficiency.
- 10) ADE will begin providing training to all relevant staff and administrators at ADE and all Arizona LEAs regarding the identification of PHLOTE students prior to the 2011-2012 school year. The training will include:
 - a) A review of the LEAs' responsibilities to comply with the EEOA, Title VI and its implementing regulation, 34 C.F.R. Part 100;

¹ As set forth in paragraph 20 below, this Agreement does not purport to remedy any other existing or potential violations of Title VI, its implementing regulation, the EEOA, or any other federal law regarding Arizona's use of the Arizona English Language Learner Assessment (AZELLA) or Stanford English Language Proficiency Test (SELP). ADE's participation in this Agreement in no way constitutes an admission of non-compliance with Title VI, its implementing regulation, the EEOA, or any other federal law regarding the use of AZELLA or SELP. The parties agree that if any new English language proficiency assessment replaces the AZELLA Form AZ-2 as a result of ADE selecting a new assessment, a voluntary agreement among ADE, OCR, and DOJ, or a federal court order, that new assessment will be subject to paragraphs 9(b) and 12 of this Agreement.

- b) A review of ADE's reinstated HLS and the reinstated policies related to this HLS; and
 - c) A review of LEAs' responsibilities under ADE's reinstated policies.
- 11) ADE will document to OCR and DOJ proof of training on an ongoing basis throughout the 2011-2012 school year. The documentation will include the dates of the training, the names and titles of the individuals who provided the training, the training agenda and related materials, and the names and titles of the administrators and staff by districts/schools who attended or participated in the training, with a copy of the sign-in sheets as available.
- 12) Within two weeks of executing this Agreement, ADE will send a directive to all Arizona LEAs that requires them to inform their entire instructional staff, school administrators, and persons involved in school registration of the following:
- a) For students (i) whose parent or legal guardian completed the one-question HLS between July 1, 2009, and the date of the directive in Attachment A, (ii) who are still enrolled in the LEA for the 2011-12 school year, (iii) whose parent or legal guardian the LEA is able to locate, and (iv) who have not already been assessed with the English language proficiency assessment,² the LEA must contact the students' parent or legal guardian to inform them that the three-question HLS must be completed and the LEA must make available to the parent or legal guardian the three-question HLS (e.g., in person, by mail, via e-mail, or by phone). Communications with the parent/legal guardian about the HLS must be in a language comprehensible to the parent/legal guardian. Consistent with ADE's English Language Learner Monitoring Process, all documentation regarding the HLS must be in English and in a language comprehensible to the parent/legal guardian. (LEAs will not be required to make the three-question HLS available for any student for whom the response to the one-question HLS indicated that the student's primary language was a language other than "English" or who has already been assessed with the English language proficiency assessment.)
 - b) An answer of other than "English" on any one of the three questions will trigger a timely assessment with the English language proficiency assessment.
 - c) The provisions of paragraph 12 will be implemented in time for the start of the 2011-12 school year.
- 13) ADE will require LEAs to report to ADE by November 1, 2011, and June 15, 2012: (i) the number of students whose English proficiency was assessed pursuant to paragraph 12(a)-(b) and the number of such students identified as ELL. ADE will submit to OCR and DOJ the November 1, 2011 report by December 1, 2011, and the June 15, 2012 report by July 1, 2012.
- 14) Throughout the 2011-2012 school year, ADE will monitor the LEAs' timely implementation of the reinstated three-question HLS.

² Subject to footnote 1 and paragraph 20 of this Agreement.

ENFORCEMENT OF THIS AGREEMENT

- 15) If, at any time, ADE desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify OCR and DOJ in writing, setting forth the facts and circumstances thought to justify modification of this Agreement and the substance of the proposed modification. Until OCR and DOJ notify ADE in writing that it has agreed to the proposed modification, the proposed modification will not take effect. Any modifications must receive the prior written approval of OCR and DOJ. This approval shall not be unreasonably withheld or delayed.
- 16) For purposes of the immediately preceding paragraph, it is a violation of this Agreement for ADE to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement from OCR and DOJ for an extension of the relevant time frame imposed by the Agreement.
- 17) If OCR and DOJ believe that ADE has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written permission from OCR and DOJ regarding a modification of the relevant terms under the terms set forth above, OCR and DOJ will so notify ADE in writing and they will attempt to resolve the issue or issues in good faith. If OCR and DOJ are unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date they provide notice to ADE, OCR and DOJ may take steps to initiate an enforcement action through administrative proceedings through the Department of Education or as a referral to the U.S. Department of Justice, and DOJ may take appropriate action to enforce the terms of this Agreement and to enforce Title VI, its implementing regulations, or the EEOA.
- 18) Failure by OCR or DOJ to enforce this entire Agreement or any provision of it with regard to any deadline or any other provision shall not be construed as a waiver of OCR's or DOJ's rights to enforce other deadlines and provisions of this Agreement, or of ADE's obligation to comply with Title VI, its implementing regulations, or the EEOA.
- 19) This Agreement constitutes the entire Agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party, or agents of either party, that is not contained in this written Agreement, shall be enforceable.
- 20) This Agreement does not purport to remedy any other existing or potential violations of Title VI, its implementing regulation, the EEOA, or any other federal law. The Agreement does not affect ADE's continuing responsibility to comply with these laws and regulations. For example, OCR and DOJ are still investigating a complaint against ADE that its English language proficiency assessment, formerly the Stanford English Language Proficiency Test (SELP), now the Arizona English Language Proficiency Assessment (AZELLA), under-identifies potential ELLs and prematurely exits identified ELL students. This Agreement does not resolve this complaint or any other complaint or investigation by OCR and/or DOJ regarding ADE's compliance with Title VI, its implementing regulation, the EEOA, or any other federal law. ADE's participation in this Agreement in no way constitutes an admission of noncompliance with Title VI, its implementing regulation, the EEOA, or any other federal law regarding this matter; regarding the English language proficiency assessment formerly SELP now AZELLA or OCR and DOJ's investigation involving the use of the English language proficiency

assessment SELP/AZELLA; or regarding any other matter involving ADE that is under investigation by OCR and/or DOJ or for which OCR and/or DOJ have received a complaint.

IMPLEMENTATION OF THIS AGREEMENT

21) This Agreement will remain in effect until OCR and DOJ determine that ADE has fully complied with all of its provisions. Upon determining that ADE has achieved full compliance with the terms of this Agreement, OCR and DOJ will conclude its monitoring and will notify ADE that it is closing this case and terminating this Agreement. The parties anticipate that ADE will comply fully with the terms of this Agreement by the time it submits the July 1, 2012 report required by paragraph 13, and that once OCR and DOJ determine that this report is consistent with the requirements of paragraph 13 and all terms of the Remedial Action section of this Agreement are met, OCR and DOJ will close their monitoring and terminate this Agreement. “Complying fully” with the Agreement means that ADE:

- i) Within two weeks of executing this Agreement, revokes its one-question HLS and related policies (including but not limited to No. Ex. 48, dated August 27, 2009); reinstates the three-question HLS and policies reflecting the three-question HLS; sends all Arizona LEAs the directive in Attachment A, as prescribed under paragraphs 9 and 12;
- ii) Begins implementing training to LEAs regarding the reinstated three-question HLS prior to the 2011-2012 school year and completes training by the end of that school year, as prescribed in paragraphs 10 and 11;
- iii) Submits complete and timely reports as prescribed by paragraphs 11 and 13;
- iv) Monitors LEAs regarding their timely implementation of the reinstated HLS throughout the 2011-2012 school year as prescribed by paragraphs 12 and 14.

22) The person signing for ADE represents that he or she is authorized to bind ADE to this Agreement.

23) The effective date of this Agreement is the date of the last signature below.

For the Arizona Department of Education:

For the U.S. Department of Education:

Signatory for Date
Arizona Department of Education
John Huppenthal
Superintendent of Public Instruction

Thomas J. Hibino, Acting Director Date
Office for Civil Rights, Region VIII
U.S. Department of Education (Denver)

For the U.S. Department of Justice:

Amy Berman, Principal Deputy Chief Date
Educational Opportunities Section
Civil Rights Division
U.S. Department of Justice