



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

May 3, 2021

Superintendent Xavier Botana  
Portland Public Schools  
By email: [superintendent@portlandschools.org](mailto:superintendent@portlandschools.org)

Re: OCR Complaint Nos. 01-17-1094 and 01-20-1098  
Portland Public Schools

Superintendent Xavier Botana:

This letter is to advise you of the outcome of two complaints that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the Portland Public Schools (District). On XXXXXXXX, a Complainant (Complainant 1) alleged that the District discriminated against students on the bases of national origin and disability at XXXXXXXXXXXXXXXXXXXXXXXX (School). Specifically, the complaint alleged that English Learner (EL) students at the School often do not have their language needs considered at Individualized Education Program (IEP) team meetings, which may result in inappropriate placements in special education (Allegation 1); EL students at the School are being inappropriately placed in Functional Academic classes that are designed to serve students with cognitive impairments, when the EL students do not have such impairments (Allegation 2); EL students at the School are typically assessed using English language instruments to determine eligibility for special education, which may assess their language skills rather than their cognitive ability (Allegation 3); some EL students at the School who become eligible for special education lose their EL services when they begin special education although they are eligible for both EL and special education services (Allegation 4); and EL students at the School are being provided services in EL classes by non-qualified teachers (Allegation 5).<sup>1</sup>

On XXXXXXXX, another Complainant (Complainant 2) alleged that the District discriminated against students on the basis of national origin at the School. This complaint alleged that there a small number of EL students at the School who are students with limited or interrupted formal education, and the District is failing to provide those students with language assistance services that address their level of English language proficiency. Specifically, the Students at issue are XXXXXXXXXXXX (Student 1) and XXXXXXXXXXXX (Student 2).

As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

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<sup>1</sup> Complainant 1 also alleged that the District retaliated against her because of her advocacy on behalf of EL students and students with disabilities by issuing her a letter of reprimand and removing her caseload from her. This allegation was withdrawn by Complainant 1 on XXXXXXXXXXXX.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance from the Department. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. The District is subject to Title VI and Section 504 because it receives federal financial assistance from the Department, and is subject to Title II because it is a public entity that operates a primary and secondary education system.

During the investigation of both complaints, OCR reviewed information provided by Complainants 1 and 2, as well as the District. OCR also spoke to both complainants on multiple occasions, conducted an on-site visit in June 2019, and interviewed District staff. Through this investigation, OCR identified several areas that would require further investigation before making a compliance determination, including:

- Whether EL students at the School may have inappropriate special education placements because evaluations for special education services of EL students: (i) appear to be mostly conducted using instruments written in English and may not take adequate consideration of the students' language needs; and (ii) appears to occur without staff familiar with the students' language needs always present;
- Whether, as a result of the School's use of the "consult model," some EL students receiving special education services or who are mainstreamed in the general education curriculum may not be receiving EL services from appropriately trained EL teachers when they should be;
- Whether the teachers responsible for teaching EL students have appropriate training and credentials;
- Whether the District has been, on an annual basis, appropriately self-assessing its chosen EL program with articulated, objective standards and adjusting the EL program accordingly based on the self-assessment; and
- Whether the District lacks a developed curriculum with appropriately trained staff for Students with Limited or Interrupted Formal Education (SLIFE), and whether the District has been using the appropriate assessment tools to determine the precise language needs of Student 1 and Student 2.

In order to make a compliance determination, OCR would need to (i) conduct updated interviews of the complainants, EL teachers, general education teachers, and special education teachers; (ii) receive updated numerical and qualitative data regarding student performance, exiting, opt outs, graduation and dropout rates, etc.; (iii) review the results of the District's recent self-assessments or conduct interviews about this topic if no documentation is available; (iv) analyze the training/credentials to provide EL services of the EL and general education teachers at the School; and (v) review the District's most updated *Lau* plan.

As noted above, on July 16, 2020, the District expressed a desire to take voluntary action to resolve both complaints. OCR determined that it was appropriate, pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), to resolve the allegation with a 302 Agreement (Agreement) without completing a full investigation. On April 30, 2021, the District entered into the attached Agreement which, when fully implemented, will resolve the concerns raised in the complaints. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of these complaints. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in two individual OCR cases. 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. The Complainants may have the right to file private suits in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

Sincerely,

s/ Abra Francois  
Compliance Team Leader

Enclosure

cc: Elek A. Miller