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February 28, 2014

Mr. Ernest Brown  
Superintendent  
Tigard-Tualatin School District 23J  
6960 SW Sandburg Street  
Tigard, Oregon 97223-8039

Re: Compliance Review No. 10105002  
Tigard-Tualatin School District 23J

Dear Superintendent Brown:

This letter is to notify you of the determination in the above-referenced compliance review made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding Tigard-Tualatin School District (District), Tigard, Oregon. In this compliance review, which OCR opened on September 22, 2010, OCR assessed whether English language learner (ELL) students are denied equal educational opportunities in the District's programs and services and thus subjected to discrimination on the basis of national origin.

OCR initiated this review under Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d et seq. and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of federal financial assistance from the Department. As a recipient of federal financial assistance from the Department, the District is subject to Title VI. Therefore, OCR has jurisdictional authority to conduct this review under Title VI.

OCR's investigation examined evidence related to the following issues: identification and assessment of ELL students, implementation of the District's alternative language program -- English Language Development (ELD), ELL student placement and participation in the alternative language program, instructional materials, exit criteria and monitoring, teacher and staffing and staff development, system of program evaluation and the District's communications with limited English proficient (LEP) parents.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case and entered into a resolution agreement, which commits the District to specific actions to address the issues under review. This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

## **I. Overview of the District**

Tigard-Tualatin School District is located in the suburbs of Portland, Oregon. OCR's investigation focused on the 2010-11 school year. During that school year, the District enrolled 12,688 students in its 16 schools, which included 10 elementary schools, three middle schools, two high schools (Tigard and Tualatin High Schools), and one alternative program. The racial/ethnic composition for the District's schools is identified in the chart below.

| <b>Student Enrollment by Race/Ethnicity<br/>2010-2011 School Year</b> |       |          |                           |                     |                 |        |
|-----------------------------------------------------------------------|-------|----------|---------------------------|---------------------|-----------------|--------|
| White                                                                 | Black | Hispanic | Asian/Pacific<br>Islander | Native<br>Am/Alaska | Multi<br>Ethnic | TOTAL  |
| 63.5%                                                                 | 1.8%  | 22.4%    | 7.6%                      | .7%                 | 4.0%            | 100%   |
| 8,056                                                                 | 232   | 2,846    | 963                       | 90                  | 501             | 12,688 |

In 2010-11, the District's 1579 ELL students comprised approximately 12.4% of the overall District population. The ELL students were enrolled as follows: 1111 elementary students, 273 middle school students and 195 high school students. Other than English, there were 47 languages spoken by ELL students within the District. Spanish (81%) was the most prominent followed by Vietnamese (4%), Chuukese (2%), Marshallese (2%), and various other languages (11%). The District also provided updated information for the two following school years. For the 2011-2012 school year, the total ELL enrollment was 1279: 1037 elementary ELL students; 135 middle school ELL students; and 107 high school ELL students. For the 2012-2013 school year, the total ELL enrollment was 1301: 1057 elementary ELL students; 150 middle school ELL students; and 94 high school ELL students.

## **II. Applicable Legal Standards**

Title VI and its implementing regulation prohibit discrimination on the basis of race, color, or national origin by recipients, including the District, of Federal financial assistance from the Department. The Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b)(i)-(ii) provides 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, 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 issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11595 (May 1970 memorandum). The memorandum clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to limited English proficient (LEP) national-origin minority students. It states that school districts must

take affirmative steps to address the language needs of ELL students. To meet Title VI standards in serving ELL students, a school district must (1) select a sound educational theory for its programs for ELL students that is likely to meet their educational needs effectively; (2) use practices, resources, and personnel reasonably calculated to implement its educational theory, and (3) demonstrate that its program is successful in teaching ELL students English and providing them with access to the curriculum, or must modify the program as necessary. See *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981).

OCR's December 3, 1985 policy memorandum, "The Office for Civil Rights' Title VI Language Minority Compliance Procedures" (December 1985 memorandum) clarifies OCR's standard for determining compliance with the May 1970 memorandum. On September 27, 1991, OCR issued a policy memorandum entitled "Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency" (September 1991 memorandum), which outlines the standards and procedures used to evaluate school districts for compliance with Title VI, including requiring districts to have procedures in place for identifying ELL students. The memorandum provides additional guidance for applying the May 1970 memorandum in the context of staffing, transition and/or exit criteria, and program evaluation.

### **III. Overview of Investigation**

During the course of OCR's investigation, OCR reviewed documents provided by the District, including the District's policies regarding the provision of language development and educational services to ELL students, lists of students identified as having a primary home language other than English (PHLOTE) and identified as ELL, and reviewed staff qualifications. The District provided OCR with spreadsheets showing the language proficiency and other information for every ELL student in the District. OCR conducted an on-site review of student records at Bridgeport Elementary School, Hazelbrook Middle School, and Tigard High School. These schools were selected based on the number of ELL students identified as receiving services. OCR also reviewed hundreds of student records, including transcripts and classroom observations forms. During the compliance review, OCR interviewed District parents, teachers at various educational levels, as well as administrators involved in the District's ELL program.

#### **A. Identification and Assessment**

The May 1970 memorandum provides that school districts must take affirmative steps to address national-origin minority students' language barriers that prevent ELL students from effective participation in the district's program. The September 1991 memorandum provides that a district should have procedures in place for identifying and assessing PHLOTE students to ensure that all language-minority students who are unable to participate meaningfully in the regular instructional program are receiving alternative language services. Generally, these procedures must include an assessment of the ability of whether national-origin minority students proficiently speak, understand, read, and write English.

The District's primary tool for identifying a potential ELL student with PHLOTE is the Student Enrollment Form (SEF). The SEF includes several questions related to the student's language, including: what language did your child speak first; what language do the adults in your home speak; what language do you speak with your child; what language does your child speak at home; send printed materials in language spoken in language spoken at home (yes/no); interpreter needed (yes/no). The form is available in English and Spanish. Oral interpretation is arranged if a language other than Spanish or English is spoken.

District staff members check the home language survey and refer potential ELL students to the ELL teacher within two (2) school days. The ELL teacher then determines if the student needs English Language Development (ELD) services by scheduling a language proficiency assessment using the Language Assessment Scale (LAS) within 30 days of the beginning of the school year, or two (2) weeks after enrollment at other times of the school year.<sup>1</sup> Students who receive a LAS-Oral score below 4 or a LAS-Oral of 4-5 and a LAS-Reading & Writing score below 3 are identified as ELL. The ELL teachers, who are trained in administering and interpreting the LAS scores, also complete a Student Profile through interviews with the family, notify the District office of the student's ELL status, and notify the student's parents of the student's ELL status in writing using program placement notification forms. OCR's review of student files, as well as the information provided in the spreadsheets provided by the District for every ELL student in the District, confirmed that students were tested for ELL eligibility according to the District's timeframes.

## **B. Alternative Language Program Implementation**

If it is established that ELL students are in need of services to have meaningful access to the school district's programs, then OCR determines whether the school district has chosen a program model for providing educational services to ELL students that is based upon a sound educational approach or upon a legitimate experimental strategy. Second, OCR determines whether the district is effectively implementing the educational theory it adopted. A school district must allocate adequate and appropriate staff and resources, such as instructional materials, to implement its chosen program properly. OCR's September 1991 Memorandum advises districts that they retain an affirmative obligation to remedy "academic deficits" sustained by language-minority students in programs that temporarily emphasize English-language acquisition over other subjects.

The District's ELD program is focused on providing systematic English-language instruction for every ELL student. Using research and theory in the field of ELL instruction to guide its program development and implementation, all students receive a designated and explicit English- language development class that is research-based and includes a curriculum recommended by ODE. The District's plan is aimed at providing meaningful access to core content curriculum, achieved through the use of sheltered content instruction so that students can access academic content while learning English. The District advised OCR that it has been imperative that ELD instruction not

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<sup>1</sup> The Pre-LAS is used for kindergarten and 1<sup>st</sup> grade students; LAS-Oral and LAS-Reading/Writing are used for grades 2 through 12. The LAS is a comprehensive assessment system designed to provide complete information about a student's language proficiency. The Pre-LAS identifies oral language proficiency and pre-literacy skills of students in preschool, kindergarten, and 1st grade. The LAS consists of two major test batteries: the Language Assessment Scales-Oral (LAS-O), which measures listening and speaking, in English, and the Language Assessment Scales, Reading and Writing (LAS-R/W), which measures reading and writing skills in English.

overlap with content instruction and that ELL students not miss core content instruction. The District's ELL Plan states that specific ELD programs and associated curriculum are used to meet the individual needs of every ELL student and that the plan is implemented at each of the District's schools. The plan states that, although the ELD implementation might look slightly different in each school, it is based on the following objectives:

- ELL students will receive instruction in receptive and expressive English-language development beginning with initial enrollment in the District and as determined by an individual student language proficiency assessment.
- A commitment to sheltering instruction by grade level so that core content is accessible for ELL students.
- Instruction for all ELL students will be provided using the appropriate grade-level curriculum and will align with Oregon State standards and the District's local "Priority Learning Standards."
- Program models and instructional approaches that effectively integrate second- language learners with their native English-speaking peers will be promoted to advance the acceptance of individual and cultural diversities by students and staff.

At the elementary level, instruction is provided by the regular classroom teacher in consultation and collaboration with the ELL staff. All teachers who have ELL students in their classrooms have received training in using the Sheltered Instruction Observation Protocol (SIOP). SIOP is a research-based methodology designed to provide a framework for teachers to develop lessons that utilize methods to make content comprehensible for ELL students and is comprised of strategies for classroom organization and delivery of instruction. ELL students receive pull-out ELD services according to their language-proficiency level during a time when they will not miss core content instruction. The intention is that the instruction of ELL students is provided by classroom teachers (using sheltered methods to incorporate ELD into classroom content) and ELL teachers (who provide ELD during the pull-out period).

Secondary students (grades 6-12) receive ELD instruction in a class designated for their language-proficiency level. Students with beginning English skills are placed in sheltered classes that are supported by an ELL staff person who provides support in Spanish or through sheltered instruction in English, and are placed in sheltered classes with a SIOP trained content area teacher. Each secondary school also has an instructional coach who is equipped to assist teachers in differentiated instruction and SIOP methods. Differentiated instruction is designed to support individual students' learning in a classroom of students with varied backgrounds and needs (*e.g.*, matching instruction to students' changing needs, differentiating homework based on each individual's needs, and flexible grouping to allow teachers to match students with different peers for different types of activities.) The current instructional model consists of 30 minutes of daily pull-out ELD instruction for level-specific EL groups at the elementary level. Middle school students receive 45 to 90 minutes of ELD. High school students receive 90 minutes of ELD instruction.

The District also has a Newcomers Program for students who have been in the country for less than one (1) year, where instruction is conducted in English and the student's home language for 60-90 minutes during the first year. The newcomer instruction is provided by an ESOL endorsed teacher. Students coming out of the Newcomers Program with "reasonable Basic Interpersonal Skills (BICS) or who have academic proficiency in their first language will receive instruction in content area classes with all instruction provided in English."

### **C. Student Placement and Participation in the Alternative Language Program**

According to OCR's 1970 Memorandum, where 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. In instances where parents refuse to enroll their children in an ELL program, the school district should inform parents about the purpose and benefits of the ELL program in a language they understand and, if a student has been opted out of ELL services is unable to perform at grade level without receiving ELL services, the school district should periodically remind the parent that the student remains eligible for such services.

District staff indicated that all students who are identified as ELL and in need of ELD are served and there is no waiting list for ELD services. OCR's review of student files, as well as spreadsheets provided by the District with information for every ELL student in the District, indicates that all eligible students were currently receiving ELL services either through pull-out or in-class models. OCR interviews with ELL staff and a review of student records confirmed that ELL students received services. The District provided the following information concerning the numbers of ELL students for the 2008-09, 2009-10 and 2010-11 school years.

| <b>ELL Students in District</b> |                |                |                |
|---------------------------------|----------------|----------------|----------------|
|                                 | <b>2008-09</b> | <b>2009-10</b> | <b>2010-11</b> |
| Elementary                      | 1107           | 1075           | 1111           |
| Middle                          | 207            | 233            | 273            |
| High                            | 180            | 158            | 195            |
| <b>Total</b>                    | <b>1494</b>    | <b>1466</b>    | <b>1579</b>    |

OCR requested information regarding ELL participation and whether parents could opt their student out of the ELD program. Based on data received from the District, 30 students were opted-out of ELL services in 2008, in 2009, 76 students opted-out, and in 2010, 100 students opted-out.

OCR reviewed District spreadsheets that included the name, grade, gender, language, entry date into the ELL program, ELL exit date (if applicable), special education eligibility status, Talented And Gifted (TAG) eligibility status, language test date, language test scores, and the placement levels of every ELL student in the District. During OCR's onsite, OCR also reviewed the files of 175 ELL students, verifying their language scores, English-Language Proficiency Assessment scores, state testing results, grades, attendance, special education, and TAG eligibility status.

Following the on-site review, OCR obtained student transcripts for all ELL students at the middle and high school levels in order to supplement the data provided in the District's spreadsheets. Through this review of over 400 students' transcripts, attendance, and ELL data, OCR identified middle school and secondary students who demonstrated a history or pattern of low academic achievement and conducted additional follow-up about these students with teachers and some parents that verified that these students were receiving services and supports as described in the District's ELL plan.

#### **D. Instructional Materials**

In accordance with the December 1985 Memorandum, the adequacy of resources is determined by the timely availability of required equipment and instructional materials. Limited financial resources do not justify failure to provide adequate resources.

With respect to allocation of educational resources, the District's data response included a memo dated April 27, 2012, to all ELL staff asking them to submit orders for any supplies and materials needed for the 2012-2013 SY. Also included was a spreadsheet for "2012-13 ELL Order Form" indicating what was ordered at each school, including monetary cost listings. The District reported that the total expenditures were \$11,289.

The instructional staff interviewed by OCR did not identify any concerns about the quality of the educational resources (instructional materials) provided and available for the ELL program.

#### **E. Staffing and Staff Development**

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 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.

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

According to the District's information, currently all teachers providing ELD are certified and endorsed by the state of Oregon as being licensed to teach English for Speakers of Other Languages (ESOL), and maintain "Highly Qualified" status under NCLB.<sup>2</sup> All ELL instructional assistants (IA) are qualified under NCLB and have the English language and native language skills appropriate to

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<sup>2</sup> Public Law PL 107-110, the No Child Left Behind Act of 2001 (NCLB), is the reauthorization of the Elementary and Secondary Education Act (ESEA). NCLB requirements for "Highly Qualified Teachers": 1) a bachelor's degree, 2) full state certification or licensure, and 3) prove that they know each subject they teach.

their role in the District's alternative program.<sup>3</sup> The District's ELD teachers staff closely and appropriately supervise the support staff.

All teachers who have ELL students in their classrooms have received training in providing sheltered instruction consistent with the research based SIOP model. However, according to the associate director for ELL services, an ELD teacher who teaches Levels 1 and 2 (the first two measurable levels of English-Language proficiency) must have also have "English for Speakers of Other Languages" (ESOL) endorsement.

At the secondary level, ELD instruction is provided by ELL teachers who have an ESOL endorsement to develop the grammar and literacy skills of ELL students.

During the 2010-2011 school year, the District employed a total of 32 ELL teachers and 26 IAs, including 22 ELL teachers and 21 IAs in the District's 10 elementary schools, 4 ELL teachers and 3 IA's at the District's 3 middle schools, and 6 ELL teachers and 2 IA's at the District's 3 high schools. Some of the ELL teachers and IA's were employed on a part-time basis.

| <b>ELL Instruction</b> |                 |                     |            |
|------------------------|-----------------|---------------------|------------|
| 2010-2011 School Year  |                 |                     |            |
|                        | <b>Students</b> | <b>ELL Teachers</b> | <b>IAs</b> |
| Elementary             | 1111            | 22                  | 21         |
| Middle                 | 273             | 4                   | 3          |
| High                   | 195             | 6                   | 2          |
| <b>Total</b>           | <b>1579</b>     | <b>32</b>           | <b>26</b>  |

The updated data provided by the District reflected the following for the 2011-2012 school year: Total ELL elementary students were 1037, with 19.5 FTE teachers; middle school students is 135 with 3 FTE; high school students total 107 with 2.67 FTE; District total is 1279 ELL students with 25.17 FTE.

| <b>ELL Instruction</b> |                 |                              |
|------------------------|-----------------|------------------------------|
| 2011-12 School Year    |                 |                              |
|                        | <b>Students</b> | <b>ELL Instruction (FTE)</b> |
| Elementary             | 1037            | 19.5                         |
| Middle                 | 135             | 3                            |
| High                   | 107             | 2.67                         |
| <b>Total</b>           | <b>1279</b>     | <b>25.17</b>                 |

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<sup>3</sup> NCLB requirements for paraprofessionals or teachers' aides: at least an associate's degree or two years of college, or they must meet a rigorous standard of quality through a formal state or local assessment --knowledge of, and the ability to assist in instructing, as appropriate.



For the 2012-2013 school year, the data reflected the following: Total ELL elementary students were 1057, with 19.75 FTE teachers; middle school students were 150 with 3 FTE; high school students total 94 with 2.67 FTE; District total is 1301 ELL students with 25.42 FTE.

| <b>ELL Instruction</b> |                 |                              |
|------------------------|-----------------|------------------------------|
| 2012-13 School Year    |                 |                              |
|                        | <b>Students</b> | <b>ELL Instruction (FTE)</b> |
| Elementary             | 1057            | 19.75                        |
| Middle                 | 150             | 3                            |
| High                   | 94              | 2.67                         |
| <b>Total</b>           | <b>1301</b>     | <b>25.42</b>                 |

The District's ELL Plan states that staff development activities will be provided to all staff in order to facilitate the understanding of goals and objectives of the program for second-language learners. The Plan also states that probationary ELL teachers will be provided with specialized training and mentorship by an experienced ELL teacher. At the K-5 level, the District has four ELD teachers who are able to train other classroom teachers. These teacher-trainers conduct workshops for classroom teachers on effectively teaching ELD in the content areas in addition to the pull out ELD class delivered by their ELL department.

The District also provided OCR with information about training for ELL staff during the 2011-2011 school year. The training included a review of the ELL Policies Manual, which covers topics such as the ELL student population, Lau Plan, and School Improvement Plan. The training focused on what to do with incoming students, what to do with current ELL students, and how to handle outgoing students.

#### **F. Exit Criteria and Monitoring**

According to OCR policy, schools should exit or reclassify ELL students from the alternative language program services once they are prepared to participate meaningfully in regular instruction (*i.e.*, are proficient in reading, writing, speaking, and comprehending English) and districts should use objective measures to make sure students are fully proficient in each of these four areas before discontinuing services.

The District's plan states that a student's status as ELL is assessed at least annually through the LAS or the English Language Proficiency Assessment (ELPA).<sup>4</sup> If a student receives a composite score of 5 on the LAS, the ELL teacher meets the general education teacher and parent to review the student's performance in all four areas of language proficiency (listening, reading, writing, and comprehension) that correspond to grade-level expectations. If the team agrees that the student should be reclassified,

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<sup>4</sup> In addition to the ELPA and LAS links assessments, the District indicated that it has developed a progress-monitoring tool to assess language development and more closely monitor student progress so that teachers can make more informed instructional decisions about the language skills that students are lacking or have already mastered.

the ELL teacher places a Reclassification Confirmation form in the student's ELL file and sends a copy to the district office and to the parents. The student then enters a monitoring phase.

A reclassified student will be monitored by the ELL teacher for 2 years. A student monitoring form must be completed, including a review of grades, attendance, academic assessments, test scores, and consultation with both student and regular classroom teachers twice a year. The District indicated that if deficiencies are identified, District staff will devise a plan to rectify those shortcomings, which could include increasing direct services, modifications by mainstream teachers, and other changes to the academic program. The District indicated that it continues to monitor ELL students as part of its monitoring of the academic progress of all students.

The data provided by the District indicated that in the 2008-09 school year, 155 students were exited from ELL services. Of the 155 students exited, 19 were high school level students. In 2009-2010 school year, 271 students were exited from ELL services. Of the 271 students exited, 19 were high school level students. In 2010-2011, 21 students were exited through January 2011. All of the 2010 students were in the elementary level, except for one sixth-grade student and one twelfth-grade student.

OCR reviewed the classroom monitoring forms that were filled out by classroom teachers for exited/reclassified students, on a 1-5 scale areas of strengths, with 5 being this highest level for 14 items. Also included for several students were copies of the "Student Oral Language Observation Matrix" (SOLOM) forms, which are specific to measuring the level oral language skills in the classroom on a 1-5 scale. The District did not identify any students who it determined had deficiencies that warranted direct services or changes to their academic programs. All students received a 3 or more in most areas. On forms where the student was scored as a 3 or below, teacher notes indicated the student's failure to complete homework, though capable of doing so, not consistently paying attention and staying on task, or having health issues, as reasons for the lower score. In these cases, the students were rated at 4 or above on other areas listed. OCR interviewed ELL teachers at the elementary, middle, and high school levels, who confirmed that the District's stated exiting and monitoring criteria are implemented, as described above.

### **G. Program Evaluation**

OCR's September 1991 Memorandum requires school districts to modify their programs if they prove to be unsuccessful after a legitimate trial and further notes that as a practical matter, school districts cannot comply with this requirement without periodically evaluating their programs. If a district does not periodically evaluate or modify its programs, as appropriate, it is in violation of the Title VI regulation unless its program is successful. A school district's program evaluation should cover all of the elements of its alternative language plan, including the program's implementation practices (such as identification of potential ELL students, assessment of English language proficiency, serving all eligible students, providing appropriate resources consistent with program design and student needs, implementing transition/exiting criteria) and student performance (such as progress in English language development and academic progress consistent with the district's own goals). OCR determines whether the district has evaluated the program and taken action if the program, after a legitimate trial, fails to produce results that indicate ELL students are overcoming their language barriers sufficiently well and promptly to participate meaningfully in the district's programs.

The District's ELL Plan states that the District and its schools conduct a comprehensive review of student Oregon Student Achievement Tests data/LAS data, and qualitative data to identify potential barriers to success for the ELL students. The ELL Plan states that during the summer, the District summarizes and reviews the language-proficiency report information to look at overall growth of English Language Proficiency among its ELL population. Annual Yearly Progress (AYP) for the ELL population, an assessment of the progress of ELL students in learning and acquiring English language proficiency, is also evaluated and reviewed by District and building administrators before the school year begins. Literacy data at the elementary and secondary level for ELL students (such as ELPA and student achievement data) is evaluated regularly to determine program effectiveness. Each year, each high school submits data on drop-out rates and high school completion. The ELL Plan further states that individual student progress is monitored at least every month at all grade levels, and sometimes weekly at the elementary level. In the spring, ELL teachers gather annual data on a child and evaluate their English-proficiency growth. At the high schools, the ELL department monitors attendance and referral data to ensure students stay involved in school.

OCR interviewed the District's director of educational programs (Director) at the beginning of this compliance review (the Director is no longer at the District). The Director stated that in the past, the District primarily used the Continuous Improvement Plan (CIP) process to evaluate the ELL program's effectiveness. This process involved a review by ODE of state assessment results by school and various accountability data. Based on the review, the District submitted a consolidated improvement plan to ODE. However, for the 2011-2012 school year, the District adopted a new approach in which the District implemented additional measures to address concerns related to student performance. For example, the District added a monitoring component to the program evaluation process, including site visits, in order to obtain qualitative data about instruction in addition to the quantitative data. Based on its review, the District continued the use of the ELD framework and curriculum, but made changes to the professional development component. Instead of doing District-wide training, the District began incorporating content-specific trainings for teachers in science, social studies, and math. The Director stated the District is focusing on connecting the ELD framework into class content to give teachers specific academic targets for ELL students. The District wants teachers to know what they should be teaching and when. She indicated that her assessment of progress is a key component of this process and that the District has a small group of teachers working with neighboring school districts to assist in developing this approach to program evaluation.

The plan provided by the District included data assessment results for the 2011-2012 school year and program evaluation components. As an example, the plan included data review and program evaluation for Annual Measurable Achievement Objectives (AMAO) goals 1-5. Goal 1 measures the percentage of English language learners showing progress toward English-language proficiency as measured by ELPA. The plan stated that only 43.5% of all ELLs showed progress towards proficiency compared to 57% the previous school year. The plan also stated that based on ELPA information, 39.64% of students did not improve a level and 43.5% increased one or more levels, 10.75% decreased a level, 8.06% increased 2 levels. The plan stated that based on classroom observations, the progress monitoring tool, instructional rounds data, and principal/teacher interviews, the District identified barriers to access for all levels. The plan concluded that based on observation data, the District believes that ELL teachers will benefit from additional professional development in curriculum implementation and enhancement. Also, observational data show that within ELD classes, the level of rigor varies depending on the teacher and level of professional development.

During the compliance review, OCR requested that the District submit its most recent ELL program evaluation and, in response, the District submitted its Title III Improvement Plan, dated June 29, 2012. Title III of the ESEA provides grants to States and their local educational agencies to implement language instruction educational programs to help ELL students acquire English and achieve at high levels in the core academic subjects. The District was required by ODE to submit a Title III improvement plan because the District has failed to meet AMAO goals for ELL students. This plan included data assessment results from a review of ELPA from last 5 years, AYP reports for last 3-5 years, summary of survey data from teachers, parents, and principals, summary of principal observations, summary of internal assessment data from EBIS meetings, and school level ELL audits/observation data. The plan noted that the District had developed and would be implementing a new protocol to address the needs of students who are not making adequate progress in language development.

At the beginning of OCR's compliance review, the District stated that it intended to develop quarterly assessment benchmarks for ELL students so that they do not rely on ELPA results at the end of the year. The District provided OCR with information regarding the implementation of the new assessment system. The data reflected bar graphs for assessment benchmarks for the spring 2011-2012 time period, and an assessment called Written Expression-Curriculum Based Measurement (WE-CBM). The graph breaks down the student percentages by Level 1 through Level 4. Level 4 students met correct word sequence 44.55% of the time, and math measures 31.82% of the time.

As part of its improvement plan, the District is also working on implementing a proficiency-based grading system that would rely less on attendance and homework completion, and more on key learning targets and assigning grades based on proficiency.

In addition, the District reviews student academic achievement through AMAO's comparing outcomes for ELL students from one academic year to the next. The District's plan outlines the AMAO as a goal statement of improvement reflected by an increase in the percent of students who will meet the standards for academic achievement in a specific area. The data of AMAO for the 2010-2011 school year demonstrated that 72.39% of elementary students met or exceeded the AMAO standards in math, but only 54.25% of middle school students and only 29.15% of high school students met or exceeded the AMAO standards in math. In reading, the data showed that although 78.69% of the elementary students met or exceeded the AMAO standards, only 50.59% of middle school students and 30.58% of high school students met or exceeded the AMAO standards.

The plan outlines further goals and steps the District is taking to improve student AMAO outcomes. The data submitted for the 2011-2012 school year recognizes that ELL students are continuing to struggle to maintain passing grades in core classes. According to the information, there was a slight reduction of the percent of students receiving D's and F's at one middle school, but overall the results for the 2011-2012 school year were the same when averaged over the 3 middle schools during the time period, and slightly reduced overall at the District high schools, but not enough to meet the stated goals.

The District identified both strengths and weaknesses to its approach to increasing reading and math proficiency, and to reducing the percent of ELL students receiving D/F in core classes.

The plan outlines the process that the District uses for ongoing and annual evaluation of the effectiveness of its ELL program with respect to increasing the English-language proficiency of ELL students, their academic achievement or proficiency as measured by state mandated assessments, and as reflected in grades earned by these students in core academic classes.

The data obtained during OCR's on-site review, combined with other data provided by the District regarding AYP and student performance compared to other school districts in Oregon, indicated a growing achievement gap at the middle school and high school levels. For example, academic achievement data for 2003-2009 submitted by the District for all students (including ELL students) who met reading proficiency based on Oregon state standards, shows that between 2003-2009, students in grades 3 and 5 exceeded the state outcomes; whereas the reading proficiency of students tested in 8<sup>th</sup> and 10<sup>th</sup> grade data indicates an increasing gap in reading proficiency for students in the middle and high school levels during the same time period. Also, as noted above, through its review of over 400 middle school students' transcripts, attendance, and ELL data, OCR also identified middle school and secondary students who demonstrated a history or pattern of low academic achievement.

#### **H. Parental Communication**

Pursuant to the Title VI regulation, school districts must ensure "meaningful access" to its programs and activities to limited English Proficient (LEP) parents. Specifically, under Title VI, school districts have an obligation to "adequately notify" national-origin-minority group parents of school programs and activities that are called to the attention of other parents. The terms "adequately notify" and "meaningful access" means that parents who are LEP - based on their ability to read, speak, write, or understand spoken English - are not to be excluded from, or denied the benefits of, the district's programs and activities.

The District's ELL plan states that parents receive required notifications and information about No Child Left Behind in their native language. They also receive information about state testing and how it applies to their child through the individual schools translation and interpretation services are provided to any parent that needs access to information.

With respect to how LEP parents (both Spanish-speaking and other languages) are made aware of any translation or interpretation services offered by the District, the District provided responses from each of the District's schools. Most schools stated that parents are made aware of translation services through newsletters or calls to the parents' homes. OCR also reviewed the District's website, which reflected options for translation of the webpages in approximately 60 languages.

In addition to the above information, the following forms are available in English and Spanish: enrollment forms, emergency contact information, parent questionnaire, and immunizations status form. Grade reports are sent quarterly with grade comments in Spanish, if applicable. Automated attendance calls are made in both English and Spanish.

The student enrollment form includes a section in which the parents can respond “yes” or “no” to whether they wish to have printed materials sent in a language spoken at the home. The form also asks whether an interpreter will be needed.

The District also provides translation services. Since 2008, the District has utilized the services of “Passport to Languages” to provide professional interpreters and translation services for parent-teacher conferences, expulsion hearings, family or event nights, IEP meetings, and other communications. The District provided OCR with multiple pages of invoices in which language interpretation and written translation services were billed to Passport to Languages (including the language in which it was used for); these included progress report notices to parents in various languages. The predominant language spoken by parents other than English was Spanish; other languages included Russian, Vietnamese, and Somali. OCR interviewed the Associate Director about communication with LEP parents. When asked, she stated that the District had not received any complaints from parents regarding the adequacy of translation and interpretation services provided by the District.

As part of the compliance review, OCR made attempts to contact LEP parents either through questionnaires, letters, or phone calls. Of those parents who responded, one parent stated that she does not have a problem with any of the translation services that she has used, but sometimes it is inconvenient to come to the school and ask that documents be translated. The parent also stated that her son interpreted for her during a parent-teacher conference. In addition, the parent stated that she is unable to write an e-mail to teachers because she is unable write in English.

Another parent informed OCR that he receives short letters from the student’s school in Spanish, but that long letters are in English and he does not understand.

#### **IV. Conclusion**

Prior to the completion of OCR’s investigation, the District requested to resolve the review and submitted a signed agreement (copy enclosed) to OCR on January 27, 2014.

Based on the investigation completed to date, OCR determined that the District has chosen an ELD program model to provide English-language development and access to educational services to ELL students, that the ELD program is recognized as sound by experts in the field, and that the District has developed procedures for implementing the program. The evidence also revealed that the District has procedures in place to identify PHLOTE students and that the procedures were designed and properly implemented to ensure that the District assessed PHLOTE students to ensure that language-minority students who may be unable to participate meaningfully in the regular instructional program were receiving alternative language services. In determining whether a PHLOTE student is ELL, the District assesses the student’s ability to speak, read, write, and comprehend the English language.

Based on the above, OCR determined that the District meets Title VI standards with respect to the identification of potential ELL students and the assessment of whether they are ELL and in need of alternative language services. The agreement requires the District to take action to address the other issues examined in this compliance review for which OCR is not making a compliance determination. These areas include: the District’s implementation of its program, including the staffing and instructional resources allotted to the program, exiting and monitoring of ELL students, the District’s

evaluation of the program to determine its effectiveness, and the District's communications with LEP parents.

The agreement required the District to take the following actions by February 3, 2014:

1. To review its ELL plan and, where necessary, develop policies and procedures that comport with the Title VI requirements. This plan must describe how the District ensures that all ELL students are provided with ELD program services and specify how the District will service these students by proficiency level and grade. These policies and procedures must ensure that all ELL students are provided services consistent with the ELD plan. If any ELL student's placement deviates from the plan, the District must document why the ELL student is not provided with ELD program services in accordance with the plan. The District must also develop and implement a policy or procedure to ensure that all ELL students receive ELD program services until the students meet the plan's criteria to exit the ELD program.
2. To review and, as necessary, review the notification provided to parents/guardians of newly identified ELL students to ensure that the notification informs the parents/guardians of the benefits of participation in ELD program and that the parents/guardians may make a written request to remove the students from ELD program. This notification must be provided in a language LEP parents can understand or, for low incidence languages, the District will make available interpreters to provide this information.
3. To provide services to students whose parents removed them from ELD program services by monitoring their academic progress and including them in the District's intervention programs for struggling students to ensure that they are able to participate in the regular instructional program.
4. To review the academic progress of ELL students who, in the current school year and previous two school years, were exited from the ELD program or who did not receive services consistent with the ELD program, and, if the student is not succeeding academically, provide supplementary services and, as appropriate, re-enter the student into the ELD program.

The District must report to OCR on the implementation of item 1 by March 3, 2014. The District must provide additional reports regarding its implementation of items 1, 2, 3 and 4 by June 30, 2014 and, for item 1, by the same date annually thereafter during the monitoring of the agreement. The District's documentation must include a copy of its ELD plan and its Title III improvement plan. The District has noted in the agreement that its ELD plan has been approved by ODE. OCR will review the District's ELD and Title III improvement plans submitted as part of the monitoring for the purpose of assessing the District's compliance with Title VI and the agreement requirements. OCR review will not include and OCR will not make any evaluative assessments as to the District's compliance with state requirements or the requirements of the Title III grant.

Regarding staffing, the agreement required that, by February 3, 2014, the District must ensure that there are qualified and trained teachers and teaching staff to implement ELD program services. If the District does not have sufficient qualified and trained staff for its ELD program of services for the 2013-2014 school year, it must take the interim steps to provide staffing, including continuing efforts

to recruit qualified and trained staff members and the steps the District will take to ensure the availability and placement of qualified and trained staff members to implement the ELD program services. The District must also ensure that the classroom performance of ELD teachers is evaluated by administrators who are knowledgeable about instructional methodologies in the District's ELD plan and, by June 30, 2014, provide training on those methodologies to these administrators. By the beginning of the 2014-2015 school year, the District must ensure that all of its staff providing ELD program instruction to ELL students are trained to implement the instructional methodologies consistent with the plan. The District must report on its implementation of the agreement requirements on staffing by March 3, 2014, June 30, 2014 and annually thereafter during the monitoring of the agreement.

The agreement requires that the District take the following steps regarding its communications with LEP parents by May 1, 2014 and report to OCR on the implementation of these steps by the same date and (for items 1, 2 and 3) annually thereafter:

1. Revise and implement its policies and procedures to ensure that LEP parents are notified, in a language understood by the parents, of school activities and other information and matters that are called to the attention of other parents. Specifically, the policies and procedures must specify how District will provide language assistance services, including interpreters and written translations, to LEP parents, including parents from less predominant language groups. The District must also ensure that it has a process to identify and track LEP parents who require communication in a language other than English, including ensuring that teachers, administrators, and central office personnel are notified of these LEP parents. In addition, the District must ensure that it has a process by which District staff may obtain, in a timely manner, language assistance services, including qualified translators or interpreters as needed.
2. Develop a process by which the District ensures that all of its interpreters and translators are competent to provide interpretation and translation services and have been appropriately trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality. The District will maintain documentation to support that the interpreters and translators have the skills and proficiency to interpret and translate in English and a particular non-English language.
3. Provide translated copies or interpretation services of commonly used documents to LEP parents when it sends these documents to other parents.
4. Provide training to administrators and staff involved in providing interpretation and translation services on the District's revised policies and procedures concerning parental communication.
5. Provide notice to LEP parents on the District's revised policies and procedures concerning parental communication.

Finally, the agreement requires that by August 30, 2014, and by the same date annually thereafter, the District must evaluate the effectiveness of its ELD program services and identify modifications that it will make to improve the program's effectiveness in the school year. The process will include a review of the instructional materials provided to ensure that such materials are sufficient to effectively



implement the ELD program. The materials must be appropriate to the curriculum, and comparable in quality, availability and grade level to materials provided for the instruction of non-ELL students. The District must report to OCR on its program evaluation by September 12, 2014 and annually thereafter.

OCR will monitor the implementation of the agreement and the District's actions to ensure the District's compliance with Title VI. The District has agreed to provide data and other information in a timely manner in accordance with the reporting requirements of the agreement. OCR may conduct additional visits and 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. Should the District fail to fully implement the agreement, OCR will take appropriate action to ensure the District's compliance with Title VI, including possibly initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the 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 a minimum of sixty (60) calendar days to cure the alleged breach.

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.

OCR is committed to prompt and effective service. We look forward to receiving the District's first monitoring report on March 3, 2014. If you have any questions regarding this letter, please contact Kelli Lydon Medak, attorney, at (206) 607-1672, or by e-mail at [kelli.lydon.medak@ed.gov](mailto:kelli.lydon.medak@ed.gov). You may also contact Tania Lopez, attorney, at (206) 607-1623, or by e-mail at [tania.lopez@ed.gov](mailto:tania.lopez@ed.gov).

Sincerely,

\ s \

Gary D. Jackson  
Director  
Seattle Office

Enclosure

cc: Honorable Rob Saxton  
Deputy Superintendent of Public Instruction