

## Office for Civil Rights (OCR)

Docket number: 08951023

Date of issuance: July 31, 1997

The U.S. Department of Education, Office for Civil Rights (OCR) investigated a complaint filed against Denver Public Schools (District).

The complaint alleges that the District discriminates against limited-English proficient national-origin minority students (LEP students) by failing to provide educational services that ensure that such students have equal and meaningful access to the District's program. On April 10 through 21, 1995, OCR conducted an on-site investigation at six elementary schools, two middle schools, and three high schools, including information received prior to the visit and conversations after the visit. OCR finds that the District discriminates against LEP students on the basis of national origin and disability by not providing them equal educational opportunity, in violation of Title VI, Section 504, and Title II, and their implementing regulations.

### Identification

If a student first learned to speak another language, lives in a home in which another language is spoken, or speaks or understands another language (unless learned academically), then the student's proficiency in English should be assessed objectively to determine whether the student is LEP and in need of alternative language services. OCR learned of a variety of **inconsistent criteria used within the District for identifying students who are LEP**. According to the Director of Bilingual and ESOL Education (program director), any student who first spoke a language other than English or has another language spoken in the home is LEP, regardless of tested proficiency in English. According to the District program manual, a student is LEP who first spoke a language other than English or has another language spoken in the home, and scores below certain thresholds on oral and reading tests in English. Student file reviews and staff member interviews indicated that procedures for initial assessments of English-language proficiency varied from school to school. Some procedures involved no more than oral interviews.

**Testing was administered by staff persons who have not been trained** to administer the instrument. Inconsistent use of testing criteria was also found. **District staff did not fully understand the district's classifications (specifically category D)**. OCR further found that **language-minority students classified as category D (student who first learned to speak English but has another language spoken at home) who apparently require alternative language services to participate meaningfully in the academic environment were not identified as LEP**.

### Instructional Models

The District's selected instructional models for the education of LEP students were found to be Transitional Bilingual Education (TBE) and English as a Second Language (ESL; also referred to as English for Speakers of Other Languages, ESOL, in the program manual), both of which are considered by experts to be sound models, if implemented fully and correctly. However, OCR found that the **District has not fully implemented its selected models** because: (1) Some schools that enroll identified LEP students have **not implemented** either of the District's selected program models; (2) District educators report that the **curriculum in bilingual education is less demanding** than the District's general curriculum; and (3) Some LEP students assigned to bilingual programs are not receiving full program services because the designated **bilingual teacher does not have the Spanish-language ability** necessary to provide full services, or the **students receive services only from a bilingual paraprofessional**.

When a district permits a parent to decline a LEP student's participation in a particular formal alternative language program, the district must continue to ensure that the student has an equal opportunity to have his or her English-language and academic needs met. District- and building-level staff persons informed

OCR that **LEP students receive only mainstream educational services once they or their parents decline participation in alternative language program** services. This was confirmed by OCR's review of student files.

Language-minority students who first learned to speak English are designated by the District as language category D, regardless of their proficiency in English. The **District does not provide alternative language services for all LEP students in language category D**. According to a member of the program director's staff, schools are not permitted to staff for category D students. If the alternative language program class is filled with category A, B, and C students, the school cannot hire or place another teacher to provide alternative language services for the category D students. The staff person added that category D LEP students are often those most in need of alternative language services because participation in the mainstream classroom becomes increasingly difficult for them.

### **Staffing:**

Administrative staff persons informed OCR that, although teachers in a bilingual education classroom need Spanish-language skills in order to provide core-area instruction, **not all teachers instructing in "bilingual" classrooms were able to speak Spanish**. LEP students assigned to alternative language program classrooms with unqualified teachers receive **native-language instruction from paraprofessionals who are not qualified to teach**.

Administrative staff persons informed OCR that evaluation of alternative language program teachers' performance, like the evaluation of all teachers, is the responsibility of the building principal or assistant principal. They stated that principals are generally unfamiliar with instructional methodologies for second-language learners. **To evaluate alternative language program teachers effectively, District principals need training.**

### **Instructional Materials and Resources:**

Limited financial resources do not justify failure to remedy a deficient supply of instructional materials and resources suitable for LEP students. According to the program director, in the case of most schools, **instructional materials in alternative language program classrooms are not comparable in quantity or quality**, when compared with those in mainstream classrooms. Principals often buy all of the materials for the mainstream classrooms first; then they **buy alternative language program materials out of money left over**, even at bilingual schools. OCR's investigation included interviews with teachers and the results of a District-generated questionnaire regarding the "allocated budget for resources" of 21 elementary school ESL teachers.

### **Exit Criteria:**

Building-level investigation, including review of records, confirmed that **alternative language program services are commonly discontinued for LEP students who have not demonstrated proficiency in the four English-language modalities of speaking, reading, writing, and understanding**. Alternative language program teachers stated that there are no criteria for exiting LEP students from bilingual education at the elementary level. A middle school alternative language program teacher stated that LEP students transition out of bilingual education in two to three years, once they are proficient in oral English skills. Another middle school staff person informed OCR that category C and D students should be out of bilingual education and in the mainstream core because "they are more dominant in English." At the high school level, assessment criteria for exiting are virtually ignored. Overall, the **District fails to ensure that when LEP students are exited from alternative language services, they are prepared to participate meaningfully in the mainstream classroom**. Exit criteria used are often based on subjective data or locally-developed tests that are neither normed nor validated. The **exit criteria, where established, often disregard LEP students' ability to read or write English**.

### **Former LEP Students:**

Building-level investigation confirmed that, **once LEP students were exited from alternative language program services, their ability to succeed academically is not monitored.** Interviews reported that staff persons often do not know who any former LEP students enrolled at the school may be. A middle school alternative language program teacher stated that all monitoring is done informally by stopping the students in the halls and asking how they are doing; she does not think she has the "power" to do anything more formal. A high school alternative language program chairperson also denied being aware of a formal procedure for monitoring former LEP students.

### **Program Evaluation**

OCR requested District reports, summaries, or evaluations assessing the implementation of the effectiveness of the programs and services for LEP students. The District's report included documentation of LEP students' aggregate gains or losses on annual achievement test scores; that is, all LEP students' achievement in the school year is compared with their achievement level in the previous year to yield an average grade-equivalent change. However, the **academic achievement of LEP students is not compared in the reports with the achievement of other students.**

An administrative staff member noted that close to 50% of all Hispanic students are known to drop out. Many of the students dropping out are from language category D, which further indicates a need for them to receive specialized services, according to the staff member.

### **Communication with parents:**

OCR observed notices that were intended for language-minority parents, were often issued in English only. Translated notices sometimes did not contain the same information that is provided to the parents of other students in a language understood by the parents.

### **Communication with students:**

OCR found that the District fails to ensure that language-minority students consistently receive notices of activities, responsibilities, and academic standards in a language and mode of communication appropriate to their language needs, and containing the same information that is provided to other students.

### **LEP Students With Disabilities**

In order to account for the effect of language on test results, staff persons at some school districts consider students' "dominant language" or "primary language," often using the terms interchangeably. However, **determining that a student is dominant in English is not equivalent to determining that the student is proficient in the language** skills required to produce valid, reliable results on a special education evaluation instrument.

### **Evaluation**

The determination of "language dominance" **was not based on a comparison of objective assessment of proficiency in two or more languages.** Rather, staff persons were invited to draw a judgment of language dominance based on subjective information regarding the student's language use and background. The person completing the form, who is not necessarily qualified to administer special education testing instruments, may suggest the language to be used for testing.

**Language-minority students were not tested to determine the appropriate language for evaluation.** Sometimes LEP students are evaluated in English only because school staff persons decide that LEP students are "fluent enough" in English.

Diagnostic **testing instruments that are published in English are often interpreted or translated** into other languages for students who speak another language.

OCR also observed in language-minority student files several examples of **staff persons disregarding the advice of evaluators that unknown effects of language-related criteria** affect the reliability of the results, and should be considered when looking at test scores. Review of language-minority students' special education files consistently indicated that diagnosis and placement decisions were based, to a significant extent, on the interpreted meaning of scores rendered for diagnostic instruments. IEP staffing committees and subsequent evaluators did not record cautions included in evaluation reports regarding the effect of linguistic differences on the validity and reliability of diagnostic instruments.

Overall, the District fails to ensure that language-minority students are not assigned to special education programs on the basis of criteria that essentially measure and evaluate English-language skills.

#### **Parental Notification of Procedural Safeguards**

**Staff persons did not describe a consistent procedure for identifying the need to communicate with parents in a language other than English.** Some staff persons rely on prior special education records. Some staff persons rely on the same language screening records, which, as shown, fail to identify all language-minority students whose limited ability to speak, read, write, or understand English is a barrier to their meaningful participation in the mainstream academic environment. Some staff persons do not know the parents' language needs until the staffing, well after parents were to have been notified of their rights and offered the opportunity to provide informed consent to the evaluation.

#### **Dual Services (Alternative Language and Special Education Programs)**

OCR was told in interviews that District **schools lack special education staff persons who are qualified to deliver recognized alternative language services.** The District does not pay special education teachers to receive training in alternative language service delivery, as they do alternative language program teachers in the regular education setting. To meet their English-language needs, LEP students with disabilities receive "bilingual support," which is described as tutoring by bilingual paraprofessionals.

**Some LEP students receiving special education services do not also receive alternative language services** at all schools; this was confirmed by a review of student records. Some LEP students who receive alternative language services, receive less service time on average than other LEP students.