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June 29, 2023

Via Electronic Mail

Superintendent David Broskie
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Re: Clay County School District EEOA Investigation

Dear Superintendent Broskie and Mr. Bickner:

We write to provide notice of the results of the United States Department of Justice's ("DOJ") investigation into Clay County School District's ("District") services and programs for English Learner ("EL") students. The Civil Rights Division and the U.S. Attorney's Office for the Middle District of Florida jointly conducted the investigation under Section 1703(f) of the Equal Educational Opportunities Act of 1974 ("EEOA"), 20 U.S.C. § 1703(f). Section 1703(f) requires school districts to "take appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs." *Id.*

On February 6, 2020, we notified the District of our EEOA investigation. In our initial letter and subsequent correspondence, we requested relevant information and documents to evaluate the District's compliance under Section 1703(f). We conducted remote interviews of Central Office staff in Spring 2021 and visited the District from March 28 through April 1, 2022. During our visit, we observed classroom instruction and interviewed school-based personnel at nine schools. Dr. Maria Coady, DOJ's consultant with expertise in K-12 EL programs, instruction, and practices, reviewed the District's information and joined DOJ for all of our interviews and site visits.

We extend our sincere thanks to Superintendent Broskie, who became superintendent after our investigation began and cooperated fully throughout. We also extend our thanks to the Superintendent's staff, many of whom also began their current roles in the District after our investigation began. Their time and assistance in compiling our requested information and participating in interviews were invaluable in informing our understanding of the District's practices.

In accordance with our statutory requirements under the EEOA, we are notifying the District of the "conditions which, in [our] judgment, constitute . . . violation[s]" of the EEOA. 20 U.S.C. § 1710. Below we discuss those conditions, identify the relevant legal principles, and describe the facts underlying our conclusions. We appreciate and acknowledge steps the District has taken to begin addressing these conditions, many of which pre-existed the current leadership, and the obstacles the District overcame during our investigatory period. We share the District's desire to work collaboratively to improve its EL programs and practices. We look forward to discussing with you and other District personnel this letter, and the remedial steps in the enclosed proposed settlement agreement.

Background

The District operates 41 traditional public schools with a total enrollment of approximately 36,000 students, of whom around 1,250 are EL students. The District's students and families speak approximately 43 languages. Roughly two-thirds of the EL student population speaks Spanish. Other languages commonly spoken include Haitian-Creole and Tagalog.

The District implements a "mainstream-inclusion" model to provide English language instruction to EL students. In that model, EL students are placed in classes alongside their non-EL peers. Teachers are expected to provide differentiated instruction in their classrooms to make the core content accessible to EL students while simultaneously providing "additional and appropriate instruction" for EL students so that they attain proficiency in English. *Parent Notification of EL Program*, page 1. The "mainstream inclusion" model does not require, and the District does not provide, any designated English Language Development classes, also known as English as Second Language or English for Speakers of Other Languages instruction. The District also employs ESOL Assistants, some of whom speak languages in addition to English, but none of whom are certified teachers. ESOL Assistants may support EL students in mainstream classrooms or in separate "ESOL rooms," where they may help EL students with their assignments or with using computer programs. The District provides self-paced computer programs, Rosetta Stone and Imagine Learning, to EL students with low English language proficiency ("ELP") levels and other EL students whom the District believes may benefit from them.

All District teachers who educate an EL student must complete a certain amount of training in English for Speakers of Other Languages ("ESOL"). Under the state of Florida's training requirements, elementary-education teachers and secondary-education English/Language Arts teachers must complete 300 hours of professional development related to serving EL students. Core content-area teachers, administrators, and school counselors must complete 60 hours of professional development related to serving EL students. These are one-

time requirements; once an employee completes their 60 or 300 hours, they do not need to complete any refresher training, continuing education, or other professional development specific to serving EL students. The District provides a teacher professional-development program comprised of up to five, six-week courses designed to meet either the content-area teachers' 60-hour requirement or the 300-hour requirement. Each course has a synchronous introductory meeting and is otherwise self-directed. The District also provides an online, 60-hour administrator training course using Google Classroom and a 60-hour in-person training program for incoming school counselors who have received no prior ESOL preparation.

Conditions Identified

Our investigation into the District's EL programs and services identified several conditions that violate Section 1703(f) of the EEOA: (1) the District fails to appropriately identify and assess potential EL students; (2) the District's EL program is not reasonably calculated to effectively implement its chosen model of instruction; (3) the District fails to overcome language barriers that impede EL students' participation in general-education support systems and the District's Exceptional Student Education Program; (4) the District prematurely exits EL students from the EL program before they demonstrate proficiency in English; (5) the District does not communicate effectively with LEP parents; and (6) the District does not properly evaluate its EL programs for effectiveness.

The EEOA requires school districts to "take appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs" by, among other actions, providing an effective EL program to help EL students learn English and participate fully in school. 20 U.S.C. § 1703(f); *see Castañeda v. Pickard*, 648 F.2d 989, 1009-10 (5th Cir. 1981). We evaluate a District's EL program by applying the Fifth Circuit's three-pronged analysis from *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). These prongs assess "the appropriateness of a particular school system's language remediation program . . . under § 1703(f)": (1) whether the chosen program is based upon sound educational theory or principles; (2) whether the program is reasonably calculated to implement effectively the educational theory; and (3) whether, after a period of time sufficient to give the program a legitimate trial, the results of the program show that language barriers are in fact being overcome within a reasonable period of time. *Castañeda*, 624 F.2d at 1009-10. This analysis also considers whether, in terms of design, implementation, and results, the EL program is "reasonably calculated to enable [EL] students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system." *Id.* at 1011.

Below we describe the conditions that we determined violate the EEOA. 20 U.S.C. § 1710.

I. The District Fails To Appropriately Assess and Identify Potential EL Students.

A school district must have procedures in place to accurately and timely identify students who have a primary or home language other than English and to determine if they are EL students through a valid and reliable English proficiency assessment that tests all four language "domains"—reading writing, speaking, and listening. *See Keyes v. Sch. Dist. No. 1, Denver*, 576 F. Supp. 1503, 1513-14, 1518 (D. Colo. 1983) (absence of a formal valid testing process to

identify EL students violated the EEOA); *Rios v. Read*, 480 F. Supp. 14, 23 (E.D.N.Y. 1978) (“The school district has the [EEOA] obligation of identifying [EL] children . . . by objective validated tests conducted by competent personnel”); *Cintron v. Brentwood*, 455 F. Supp. 57, 64 (E.D.N.Y. 1978) (requiring “validated” tests of English proficiency). A valid testing process is essential to properly identify ELs because “[i]t is common for parents to overstate the language abilities of their children.” *See Keyes*, 576 F. Supp. at 1514.

Under the District’s current EL identification process, all students complete a Home Language Survey during registration. The District administers the Individual Proficiency Test (“IPT”) screener to any student whose responses to the Home Language Survey identifies the student as a potential EL student. The IPT has two components, which assess English proficiency in four language domains: a listening/speaking component and a reading/writing component. Kindergarten through second-grade students who score Non-English Speaking (“NES”) or Low English Speaking (“LES”) on the listening/speaking component are categorized as EL students, and kindergarten through second-grade students who score Fluent English Speaking (“FES”) on the listening/speaking component are categorized as not EL students without further testing. Similarly, third through twelfth grade students who score NES or LES on the listening/speaking component are categorized as EL students without any assessment of their reading/writing skills. Third through twelfth grade students who score FES on the listening/speaking component are tested in the reading/writing component. Tested students who score NES or LES on the reading/writing component are categorized as EL students, while tested students who score FES on the reading/writing component are categorized as not EL students.

The District’s EL identification process does not reliably identify all EL students as required by the EEOA.¹ The EEOA requires districts to “assess the proficiency of students in all four domains of English.” U.S. Department of Justice & U.S. Department of Education, Dear Colleague Letter, January 7, 2015, at 10-11. Students entering the first semester of kindergarten may instead be evaluated in listening and speaking. The District’s failure to meet this requirement results in under-identification of EL students and insufficient diagnostic information to adequately serve EL students.

First, the District does not evaluate any of its second-semester kindergarteners through second-grade students for English proficiency in the reading/writing domains. Because the District fails to test those students in all four domains, EL students in those grades who demonstrate proficiency in the speaking/listening domains but are not proficient in reading/writing are improperly identified as non-ELs, and thus do not receive EL services for which they were eligible. The District must test these students in all four domains to identify whether each student is eligible for EL services.

Second, the District also does not administer the reading/writing component of the IPT to third through twelfth grade students if the student tests as NES or LES in the listening/speaking component of the IPT. The District, however, must assess EL students’ initial level of proficiency in all four domains to tailor instruction appropriately in the classroom for each EL

¹ Further discussed below, *see infra* Part V, significant communication failures also reduce the reliability of responses to the Home Language Survey, leading to the potential under-identification of EL students.

student and help each EL student become fully proficient in English. Without a complete evaluation of an EL student's ELP level in all four language domains, teachers of newly identified EL students lack the information they need to provide appropriate, responsive English language instruction. By failing to test EL students in all four domains, the District fails to appropriately assess potential ELs or determine their language needs.

II. The District's EL Program Is Not Reasonably Calculated To Effectively Implement Its Chosen Model of Instruction.

To comply with the EEOA, "the programs and practices actually used by a school system [must be] reasonably calculated to implement effectively the educational theory adopted by the school." *Castañeda*, 648 F.2d at 1010. "[S]tudents who do not understand English are effectively foreclosed from any meaningful education" if they are merely provided "with the same facilities, textbooks, teachers, and curriculum" as non-EL students. *Lau v. Nichols*, 414 U.S. 563, 566 (1974); see *Castañeda*, 648 F.2d at 1008 (noting that Congress passed "the essential holding of *Lau*, i.e., that schools are not free to ignore the need of limited English-speaking children for language assistance to enable them to participation in the instruction program of the district" with the EEOA). Districts must "follow through with practices, resources and personnel necessary to transform the theory into reality." *Castañeda*, 648 F.2d at 1010. "Practical effect must be given to the pedagogical method adopted." *Gomez v. Ill. State Bd. of Educ.*, 811 F.2d 1030, 1042 (7th Cir. 1987).

The mainstream-inclusion model² the District chose is extremely difficult to implement effectively in any one classroom, let alone consistently across the District. It relies exclusively on individual teachers to simultaneously make core content accessible (i.e., use differentiated materials, instruction, and assessments to ensure EL students have equitable access to the core curriculum) and provide English language instruction (i.e., provide "additional and appropriate" instruction so ELs gain English language proficiency). For this model to succeed, teachers must know each of their EL student's English language needs, differentiate their instruction and use of English so students can understand the material being taught, and implement English language instruction in their class so each EL student can attain English language proficiency. Teachers must meet each of these goals while also addressing each of the individualized needs of both the EL and non-EL students in the classroom. To effectively carry out its program, the District must provide all teachers with intensive, individualized, and ongoing professional development, continually assess its implementation of the model, and monitor the effectiveness of the provision of services to ELs.

² The United States' expert reviewed empirical studies on the effectiveness of mainstream inclusion and assessed the District's implementation of its chosen model. Based on that research, the United States' expert concluded that the "mainstream inclusion" model, which is listed in the State of Florida's ELL Plans as one of six available options, is most likely aligned to what is more commonly called "sheltered English instruction." Nor does the State of Florida provide any guideline or distinction between the "mainstream inclusion" model and the "sheltered English" model option listed in its ELL Plans.

We found the District fails to adequately implement the mainstream-inclusion model based on the following: (a) the District places EL students in classrooms with no EL services; and (b) the District's policies, procedures, and trainings are not reasonably calculated to ensure EL services are provided in classrooms with ELs.

A. The District Places EL Students In Classrooms With No EL Services.

In the District's EL classrooms, we found no evidence of actual English language instruction and only scant evidence of strategies that make core content accessible to ELs. Instead, EL students are placed in English-language immersion classrooms, where they do not receive content-area instruction in a language they can understand or any English language instruction. *See Keyes*, 576 F. Supp. at 1518 (criticizing a district's program, in which children "[we]re not receiving content area instruction in a language which they can understand and . . . at best, some remedial oral English training"). This English-only submersion, with no appropriate action to help ELs overcome their language barriers, violates the EEOA.

1. The District's EL Students Do Not Receive EL Services.

To assess whether the District effectively implements the mainstream-inclusion model in its hundreds of classrooms with EL students, we evaluated, with assistance of our expert, the provision of effective instructional strategies for EL students by reviewing lesson plans and observing classroom instruction. Neither the lesson plans for classes with EL students nor our classroom observations showed the consistent use of instructional strategies for ELs necessary to implement the mainstream-inclusion model.

Lesson plans we reviewed showed that teachers generally were not planning to use the kinds of instructional strategies necessary to make core content accessible to ELs in a mainstream-inclusion classroom or to provide English language instruction. Dr. Coady reviewed 52 lesson plans from EL classrooms in a range of grade levels, subject areas, and represented native languages. On a 5-point scale looking for objective criteria that demonstrate a teacher's intent to differentiate instruction for ELs, she determined that the vast majority of lesson plans scored a 0 or 1. None of the lesson plans reflected language objectives for the EL students' specific ELP levels or differentiated assessments for EL students.

Our classroom observations confirmed what the poor lesson plans indicated: generally, EL students do not receive any EL services in their classrooms. We saw no evidence of English language instruction and only limited, sporadic use of instructional strategies that make core content accessible to ELs. Dr. Coady observed 32 classrooms, including three self-contained classrooms, across elementary and secondary levels, core content areas, and school demographics. None of the classrooms had language objectives written or displayed or any evidence of the students' home or cultural backgrounds. Students' first languages were also largely absent, and Dr. Coady did not observe EL students consistently using a District-provided translation dictionary. Teachers generally did not modify their speech or slow their pacing for ELs, and they did not differentiate questions to ELs based on the students' ELP levels. Instead, teachers often spoke English with the same pace, vocabulary, and colloquialisms used for native English speakers. Dr. Coady concluded that 94% of the observed classrooms reflected a submersion approach with no evident differentiation or English language instruction for ELs.

Dr. Coady noted that a handful of the observed classrooms had better practices than others. For example, one secondary [REDACTED] teacher provided students with handouts translated into their native language to help them complete the English handouts they received in class. One elementary school teacher also stood out for positive instructional practices. She appeared to purposefully group her EL students to support their learning; used demonstrative materials and gestures to illustrate her points; and used formative assessments, including non-verbal gestures, to confirm that all students, including her EL students, understood the instruction.

But these limited examples were aberrations from the norm in the District based on our observations. In many of the secondary English/Language Arts classrooms, we observed EL students spending most of the class period on computers using Lexia Learning software. In a [REDACTED] class about word problems, a newly arrived EL student from Cuba appeared lost and confused, looking around the room with a word problem on his computer. After several minutes, the [REDACTED] teacher attempted to explain the word problem, then asked an EL student from Puerto Rico to help the EL student from Cuba and walked away. That Puerto Rican EL student, however, was unfamiliar with Cuban-specific Spanish vocabulary. Ultimately, three other Spanish-speaking ELs from Puerto Rico, Cuba, and Venezuela intervened to help the newly arrived EL navigate the word problem. The teacher failed to provide differentiated instruction, materials, and assessments for that EL student and failed to recognize the cultural differences in the backgrounds of her Spanish-speaking ELs. As a result, that newly arrived EL did not receive equitable access to classroom instruction, and the teachers' other EL students instead bore the burden of helping the newly arrived EL student navigate the mainstream-inclusion classroom.

2. The District's Computer Programs and ESOL Assistants Are Not EL Services And Cannot Substitute For Certified, Properly Trained Teachers.

“Appropriate action” under the EEOA requires the provision of EL services: English language instruction to help EL students gain English proficiency and supports in the classroom to make core content accessible to ELs. 20 U.S.C. § 1703(f); *see* Dear Colleague Letter at 12 (“EL programs must be designed and reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time”), 13 (“districts should provide designated English Language Development (ELD)/English as a Second Language (ESL) services for EL students”). These services must be provided by qualified and appropriately trained teachers. “As in any educational program, qualified teachers are a critical component of the success of a language remediation program.” *Castañeda*, 648 F.2d at 1013. “Paraprofessionals, aides, or tutors may not take the place of qualified teachers.” Dear Colleague Letter at 16.

Based on our observations, the District improperly relies on computer programs and ESOL Assistants—not as a supplement but instead as the primary means—to educate ELs in English. Computer programs and ESOL Assistants cannot provide qualified English language instruction. While many of the ESOL Assistants we met were deeply passionate about helping the EL students they worked with, they are not certified teachers, and they lack the specialized knowledge and essential preparation to provide English language instruction. The District's computer programs should be used only as optional supplements for ELs and do not qualify as English language instruction. Yet the District often had ESOL Assistants “push” into classrooms

for basic support or, more often, “pull” EL students out of classrooms to use Imagine Learning or Rosetta Stone.

The District’s reliance on these supplements instead of actual instruction time with qualified teachers impedes EL students’ education. For example, during one of our elementary school classroom observations, the ESOL Assistant “pulled” six EL students from the class midway through the lesson and took them to a separate “ESOL room.” Instead of the engaged instruction and purposeful grouping their teacher provided, the EL students were mostly assigned to sit alone in a near-silent environment in front of computers. Some of the students lacked a functional computer and, as a result, sat idly without any work. One student, whom we had observed in the classroom as engaged in the material and learning, did not appear to understand the Imagine Learning computer program and was clicking randomly with no guidance. The ESOL Assistant never came to help her. In another school, an EL student with disabilities was sent from her classroom to the “ESOL room,” with a lesson plan and a request from the teacher that the ESOL Assistant teach [REDACTED] to that student. As a result, a well-meaning but ultimately unqualified ESOL Assistant was charged with instructing an EL student who most needed an experienced, qualified teacher.

B. The District’s EL Program Is Not Reasonably Calculated To Effectively Implement the Mainstream-Inclusion Model.

The District’s policies, procedures, and trainings are not reasonably calculated to effectively implement the mainstream-inclusion model. The structure of the District’s EL program fails in the following ways: (1) the District’s existing training does not adequately prepare teachers to implement the EL program effectively; and (2) the District fails to appropriately oversee the provision of EL services in classrooms.

1. The District’s Existing Training Does Not Adequately Prepare Teachers To Implement the EL Program Effectively.

The District fails to adequately train its teachers and administrators to support ELs. Under the EEOA, districts must hire and train enough qualified staff to implement their chosen EL programs. *Castañeda*, 648 F.2d at 1010, 1012-13. *See also* Dear Colleague Letter at 14 (“At a minimum, every school district is responsible for ensuring that there is an adequate number of teachers to instruct EL students and that these teachers have mastered the skills necessary to effectively teach in the district’s program for EL students.”). Teachers should at a minimum meet the state requirements for teaching EL students, but state standards do not necessarily qualify a teacher to deliver EL services that satisfy the EEOA. *See Castañeda*, 648 F.2d at 1012-13.

The District’s trainings to meet state-mandated requirements bear no correlation to the provision of EL services in classrooms. Our observations included teachers who completed the 300-hour training requirement recently or years ago, teachers who completed the 60-hour training requirement recently or years ago, and teachers who were still completing their training requirement. Yet we observed consistently poor or non-existent EL instructional practices throughout the District, regardless of the recency or level of teachers’ EL-related training. The lack of correlation is unsurprising: the District’s EL trainings are largely self-directed and on-line, with no way to assess whether individuals are engaged with the course materials, no

continuing education on EL instruction, and no opportunity for feedback or evaluation. Given the failures of the District’s existing training program to result in EL services, we found that the District fails to provide training that “adequately prepares teachers to implement the EL program effectively.” Dear Colleague Letter at 15.

2. The District Fails To Appropriately Oversee the Provision Of EL Services In Classrooms.

“[S]chool districts need to ensure that administrators who evaluate the EL program staff are adequately trained to meaningfully evaluate whether EL teachers are appropriately employing the training in the classroom and are adequately prepared to provide the instruction that will ensure that the EL program model successfully achieves its educational objectives.” Dear Colleague Letter at 15. *See Rios*, 480 F. Supp. at 18, 23-24 (finding EEOA violation in part because administrators lacked relevant training to evaluate teachers implementing District’s bilingual program). The District assigns school-based administrators with the responsibility of ensuring teachers provide EL services. *See 2019-2022 Clay County ELL Plan* at 9 (“School-based administrators are responsible for monitoring the ongoing implementation of comprehensible instruction for ELLs in the classrooms on a daily basis.”) But the District fails to adequately train or equip school administrators to meaningfully evaluate whether teachers of EL students are appropriately making core content accessible to ELs and providing English language instruction. Because of this lack of accountability, the District fails to implement its chosen instructional model for EL students.

First, administrators are not trained to look for instructional practices for ELs. The District does not require administrators to take the District’s EL-specific administrator training if they received ESOL training as a teacher. But teacher-aimed ESOL training may have occurred years ago and, regardless, does not train administrators on how to look for or provide constructive feedback to teachers on instructional practices for ELs. Moreover, the District’s EL-specific administrator training also does not address how to look for EL-specific instructional practices or support teaching EL students. As a result, the District does not train school-based administrators on how to meaningfully evaluate the adequacy of EL services in their schools.

Second, we found no evidence that school-based administrators oversee the implementation of instructional strategies for EL students in classrooms. Based on our review, none of the District’s classroom observation/walkthrough tools direct administrators to observe a teacher’s EL instructional strategies. None of the school principals we interviewed reported modifying or using an observation tool to capture teachers’ EL instructional practices. Interviewed principals also admitted that when they conducted a walk-through, they looked holistically for the use of differentiated instruction for multiple considerations and did not recall doing any specific walk-throughs to assess instructional strategies for ELs. Nor did principals consistently familiarize themselves with the students in the classroom beforehand to know whether any EL students were in the classroom, who the EL students were, or what their needs might be; without that knowledge, administrators are unprepared to assess the adequacy of EL services in a classroom. We also found no indication of whether or how administrators or teachers use feedback and data to improve teachers’ instructional strategies specifically for EL students. As a result, we found that school administrators—the District’s designated employees responsible for overseeing implementation of the mainstream-inclusion model—are not

adequately prepared to and do not meaningfully evaluate the provision of EL services in their schools.

III. The District Fails to Overcome Language Barriers That Impede EL Students' Participation In General-Education Support Systems and The District's Exceptional Student Education Program.

Section 1703(f) of the EEOA requires state and local education agencies to “take appropriate action to overcome the language barriers” of EL students to avoid “imped[ing] equal participation by students in instructional programs.” 20 U.S.C. § 1703(f). But the District does not take “appropriate action” to overcome EL students’ language barriers when determining how to support struggling EL students who may benefit from interventions or evaluations for potential disabilities. These failures impede EL students’ equal participation in the District’s general education and Exceptional Student Education (“ESE”) programs.

The District uses a Multi-Tiered System of Supports (“MTSS”) for all students who struggle in the District’s general-education program. Under this system, a school-based team identifies a struggling student’s academic or behavioral concerns, develops responsive and individualized interventions for that student, monitors that student to determine whether the intervention addresses the concern, and re-tailors the interventions and supports accordingly. Interventions may increase in intensiveness and individualization through this process. Students whose concerns are not resolved by the highest-level, “Tier 3” supports may be considered for evaluation for a potential disability. For behavioral concerns, school-based [REDACTED] are often involved in assessing the student, identifying potential causes for the student’s concerns, determining whether to evaluate the student for a potential disability, and conducting that evaluation. Students identified as having a disability may receive special supports and services through the District’s ESE program.

The District fails to take appropriate action to overcome EL students’ language barriers at every level of this process. Many of the District’s school-based [REDACTED] are not trained to appropriately account for a student’s language barriers when identifying potential causes or developing interventions for an EL who is not progressing academically or socially. The District does not require those school-based [REDACTED] to consult during the intervention process with more specialized [REDACTED] the District has on staff. Nor does the District provide any policies or guidance on how to appropriately account for an EL’s language barriers during the intervention process or when evaluating an EL student for a potential disability.

As a result, school-based [REDACTED] often use inappropriate practices that fail to overcome EL students’ language barriers and impede their equal participation in the District’s instructional programs. Interviewees told us of instances when school-based [REDACTED] assumed an EL student’s struggles were due to language barriers. Rather than take appropriate action to test the validity of their assumption—such as conducting an assessment, researching the student’s prior educational system and school, or developing an intervention that could aid in excluding language barriers as a cause—the school-based [REDACTED] made determinations based only on their assumptions. In fact, the District’s staff consistently referenced only one “intervention” for ELs—the imposition of multi-year waiting periods, during which the District simply continued observing the struggling EL student with no changes to supports or services.

This assumption that EL students' difficulties in school are due to language barriers, combined with the District's consistent use of lengthy waiting periods, delays or effectively denies EL students from receiving individualized, proactive interventions that consider language needs and potential ESE evaluation. For example, we identified at least two occasions where the District failed to evaluate struggling EL students who entered the District in high school and left school before their [REDACTED] determined the waiting period was long enough to eliminate language barriers as an explanation for the ELs' presented concerns. This "sink or swim" approach, in which struggling EL students are left without meaningful assistance for years, does not constitute appropriate action to overcome language barriers and impedes ELs' ability to participate equally with their non-EL peers in the District's instructional programs.

The District also fails to take appropriate action to overcome EL students' language barriers when evaluating ELs for potential disabilities. When assessing a student for a potential disability, school [REDACTED] must "select assessment instruments and strategies that are reliable and valid for the examinee and the purpose of the assessment." When using norm-referenced measures, [REDACTED] must "choose instruments with norms that are representative, recent, and appropriate for the person being evaluated." *The Professional Standards of the National Association of [REDACTED]*, Standards II.3.3. and II.3.4. School [REDACTED] also must "conduct valid and fair assessments," including by understanding the student's cultural and linguistic background and then "select[ing], administer[ing], and interpret[ing] assessment instruments and procedures in light of those characteristics." *Id.* at II.3.8.

The vast majority of assessments the District uses for potential disability evaluation are developed to be conducted in English and are not normed for EL students' varied cultural and linguistic backgrounds. Conducting and interpreting those assessments identically for EL students and non-EL students creates invalid, unreliable results. In these situations, "appropriate action" to overcome an EL's language barriers may include a number of different strategies depending on the individualized considerations of the EL student: using an assessment that is normed for the EL student's population; conducting assessments in both English and in the student's native language and comparing the results; and deploying other diagnostic approaches so that a school [REDACTED] relying on multiple points of informative data, can make an informed, data-supported determination about the EL student's potential disability.

Though our interviews with the District's [REDACTED] underscored the nuanced and individualized approach needed to assess EL students, our review showed that many of the District's [REDACTED] fail to take appropriate measures. From the 2017-18 through 2019-20 school years, nearly all of the District's EL students evaluated for potential disabilities, many of whose ELP levels were NES or LES, were evaluated in English, with no indication that an interpreter was present or that the EL student's language barriers were adequately considered. Review of one student's assessment further illustrated that the school-based [REDACTED] essentially conducted the EL's assessment identical to a non-EL's, except that the [REDACTED] assumed without additional data that the EL's low academic performance was due to language barriers. This failure to overcome EL students' language barriers during evaluations for potential disability results in inaccurate assessments of ELs and impedes ELs' participation in the District's ESE program.

The District fails to take appropriate action to overcome EL students' language barriers in receiving interventions through the District's general-education program or in being considered for participation in the District's ESE program. Instead, the District abrogates its responsibility to school-based [REDACTED] whom the District fails to sufficiently train or guide to adequately serve this population. While some individual [REDACTED] may be better equipped than others to assess and design interventions for the EL students in their schools, the District's lack of oversight, training, and guidance results in many EL students being left to struggle for years, without responsive interventions and without appropriate assessments to accurately determine the cause of their struggles.

IV. The District Prematurely Exits EL Students from the EL Program Before They Demonstrate Proficiency in English.

A school district must monitor the progress of its EL students in acquiring English proficiency and participating in the district's instructional programs. To adequately monitor progress, a school district must use a valid and reliable test to determine EL students' English proficiency and performance in the core content subjects, math, science, social studies, and English/language arts. *See Castañeda*, 648 F.2d at 1014 ("Valid testing of student's progress in these areas is, we believe, essential to measure the adequacy of a language remediation program."). When this testing shows that an EL student has achieved proficiency in English, a school district should "exit" the student from its EL program and identify the student as a former EL, unless other criteria for exit indicate that the student needs additional EL services.

The District's policy permits schools to exit EL students from the EL program in two ways: (1) "by criteria," when a student achieved qualifying test scores demonstrating English proficiency;³ and (2) "by committee," when the school's EL Committee may exit an EL who did not achieve the required test scores. The District provides no guidance on whether or when exit by committee is appropriate, and who should serve on the EL Committee. Central Office administrators at times advise schools about the use of exit by committee but has no authority to overrule the EL Committee's decision-making.

The District's EL Committees prematurely exit EL students who are not proficient in English and are still eligible to receive EL services. Interviewed school counselors and some Central Office administrators believe that the EL Committee can exit EL students from the EL program if they are enrolled in the EL program for six years, have a disability, or fail to meet the exit criteria "not because of the language barrier." The District's records of ELs exited by committee confirm that these improper practices occur. We reviewed the District's records of ELs who were exited by committee from a sample of six schools over three school years. In that sample, approximately two-thirds of the thirty-six EL students exited "by committee" were prematurely exited from the EL program for reasons like having an IEP or being "close" to meeting exit criteria. On one of the EL Committee's exit forms, the "ESOL teacher" attendance

³ Under the District's policy, a student may be exited "by criteria" if they meet at least two of the following scores: (a) at least a 4.0 Overall composite score and at least a 4.0 reading domain score on the World-Class Instructional Design and Assessment's ACCESS 2.0 test ("ACCESS"); (b) at least a 3 on the English Florida Standards Assessment; or a concordant SAT or ACT score.

line was crossed out and replaced with “classroom aide,” where an ESOL Assistant agreed to exit an EL who was not proficient in English. Multiple students in one school, including students whose scores showed that they were below the required minimum English proficiency score, were exited solely “based on teacher input & observation” with no other explanation or supporting evidence. After exiting these students, the District also ceased administering the annual ACCESS test for these EL students. The District violates the EEOA by exiting from the EL program students who are still ELs and, therefore, are eligible for EL services.

V. The District Does Not Communicate Effectively With Limited English Proficient Parents.

A district must take appropriate action to overcome the language barriers of limited English proficient (“LEP”) parents when communicating about its programs and the procedures for accessing those programs so that their children are not denied an equal opportunity to participate. *See* 20 U.S.C. § 1703(f). Ensuring equal educational opportunities for EL students requires adequately notifying their parents of district and school activities and effectively communicating in district and school meetings through interpreters and translated documents. Despite best efforts by some individual staff, the District does not communicate effectively with LEP parents and does not provide them with adequate information about the services EL students receive, thus impeding ELs’ ability to access and participate equally in the District’s programs.

First, the District’s online enrollment process is inaccessible to LEP parents. During the 2021-2022 school year, the District migrated to an online-only process for student enrollment.⁴ But using an online portal without accommodating families’ languages, literacies, access to or familiarity with digital technology, and cultural background can impose significant limitations and inequities. Completing the online registration process requires navigating a login page, user-account creation, email authentication, and an enrollment questionnaire spanning several pages. The initial login page appears to contain an option for automated translation. But when we tested it, the translation function did not work, and the enrollment forms appeared in only English. Nowhere within the online enrollment process does the District identify in English or any other language who LEP parents should contact for assistance. Though the District insisted that LEP parents could go to schools for assistance, the District does not communicate that option to LEP parents trying to enroll their children online, and it is unclear how LEP parents would know about this option. To reliably collect necessary enrollment information—including whether a student should be screened for EL services and what the parent’s preferred correspondence language is—the District must make online enrollment comprehensible for LEP parents.

Second, the District’s limited provision of qualified interpreter services impairs its ability to communicate effectively with LEP parents. The District uses only an in-person interpretation service, which must be hired for a minimum contractual amount per interpretation session. Thus, District employees rarely hired an interpreter for informal or emergency conversations that nevertheless communicated to LEP parents essential information about the District’s programs and services. Instead, District employees rely on unqualified interpreters when communicating with LEP parents, like family members or friends who accompanied the LEP parent; bilingual

⁴ Before the 2021-2022 school year, the District provided the Home Language Survey in only English and Spanish.

staff, such as ESOL Assistants or foreign-language teachers, who lack training on how to provide impartial interpretive services; and even [REDACTED], who at times improperly served both as the interpreter and as the EL's evaluating [REDACTED] in Individualized Education Program ("IEP") meetings. The District's policies reinforce this use of unqualified interpreters. For example, when discussing communications with LEP parents, one District manual states, "[i]f a translator is needed, there are several options; a friend or family member may speak English well enough to translate or a school faculty member may be bilingual and can attend the meeting to translate." MTSS Manual (2020-21 edition) at 88.

The District also often relies on Google Translate as an interpreter service to communicate with LEP parents on *ad hoc* bases. But Google Translate, left unreviewed, is not a reliable translation or interpretation service. Without qualified staff reviewing and correcting the automated translated material, its translations may be unclear or inaccurate. In addition, because of the District's reliance on Google Translate, District employees are generally unable to communicate with LEP non-print-literate parents who speak a language not spoken by the school's bilingual staff.

Third, the District fails to provide translated written documents consistently to LEP parents. The District relies on ELlevation to provide translated notices to LEP parents, and while ELlevation can translate certain notices, it cannot translate students' EL plans or other communications. Though some bilingual staff-members may create translations, none of them are trained as translators, and no District policy specifies which documents must be translated for LEP parents or how LEP parents may request translations. LEP parents, therefore, had no access to translated EL Plans, IEPs for dual-identified students, notices about IEP meetings, report cards, or other essential communications.

We found scant evidence of any communication with LEP parents in languages other than English at the school level.⁵ A teacher's parent-communication notebook for a Spanish-speaking EL student in kindergarten showed that all school information, communications, and materials were explicitly in English, including an IEP services meeting notification. The meeting notification had yellow highlighter for where the parent needed to provide information and a red arrow stating "Sign Here" at the bottom. The parent only signed the bottom and did not provide the requested information, indicating that the parent did not understand the document or how to fill it out. These failures to make oral and written communication of essential information available to LEP parents impedes EL students' equal access to the District's educational programs, in violation of the EEOA.

VI. The District Does Not Properly Evaluate Its EL Program for Effectiveness.

The District fails to adequately evaluate its EL program to determine whether it enables ELs to achieve English proficiency and "attain parity of participation in the standard instructional program" within a reasonable period of time. *Castañeda*, 648 F.2d at 1011. Even if an EL program is "premised on a legitimate educational theory and implemented through the use

⁵ Some schools adopted programs to translate informal email newsletters and similar communications, but those programs were not consistently used across the District and, based on our investigation, were not used for essential information.

of adequate techniques,” the program may “no longer constitute appropriate action” if it fails to produce positive results. *Id.* at 1010. To accurately assess the success of its EL program, a district must evaluate data that provides a comprehensive and reliable examination of how EL students, former EL students, and never-EL students are performing in the district’s instructional programs longitudinally. *See id.* at 1011, 1014; *see also Horne v. Flores*, 557 U.S. 433, 464 (2009) (“[A]s the Court of Appeals recognized, the absence of longitudinal data in the record precludes useful comparisons” when evaluating the effectiveness of an EL program.”); *United States v. Texas*, 601 F.3d 354, 371 (5th Cir. 2010) (same).

The District has not evaluated its EL program for effectiveness over time. No Central Office administrator responsible for EL-related services has evaluated the effectiveness of the EL program, and no one has received any information about evaluations conducted by their predecessors. Moreover, each person interviewed believed another member of the Central Office was responsible for evaluating the EL program’s effectiveness. No interviewed school administrator has assessed the effectiveness of their school’s EL services or heard of an assessment being done, either in the school or District-wide. Nor does any evidence exist to support the effectiveness of the District’s implementation of the mainstream-inclusion model.

The evidence the District cited does not represent an adequate evaluation of the EL program’s effectiveness. We address each in turn. First, the District points to the increase in EL students’ graduation rate over the past five years. While the improvement is laudable, without further evaluation the information is insufficient to show whether the District’s EL program is effective. Notably, the District never tracked the comparative graduation rates of never-ELs, former ELs, and ELs, and therefore failed to compare “[ELs’] progress vis-à-vis that of their English-speaking counterparts.” *Castañeda*, 648 F.2d at 1014. Especially given the increased graduation rate across the District generally, the limited graduation data alone cannot show whether the EL program is effective or whether other initiatives District-wide helped all students graduate.

Second, the District pointed to its EL students’ ACCESS scores from 2016 through 2019, which showed that the District’s EL population demonstrated English proficiency at or above the state average each year. That fact alone does not show whether the District’s EL program is effective or whether other factors outside of the District, such as the demographics of its EL population or the out-of-school supports EL students may receive in the community, influence EL students’ acquisition of English. Moreover, the District did not disaggregate the average rate of EL program exit and the average standardized test performance by program, school, content area, years in the EL program, and grade level to determine which schools’ and grades’ EL programs require modification. In other words, achieving parity with the average statewide English proficiency rate on the ACCESS alone does not show whether the District’s EL program is effective, or whether it and its comparators’ programs are all similarly ineffective. The District’s evaluation of its EL program must assess whether *its* provision of services is effective, regardless of how its services compare to its neighbors.

Third, in a response to a Request For Information, the District credits its use of Rosetta Stone and Imagine Learning for its EL students’ performance. To support its assertion, the District relies on the Rosetta Stone Usage Report, which records each student’s hours logged in

Rosetta Stone and percentage of progress completed, and select students' grades. But these software programs are not EL services under the EEOA, and monitoring use of these programs does not qualify as evaluating whether the District's provision of EL services is effective. Nor is the performance of individual, outlier EL students indicative of the EL program's effectiveness for all EL students.

* * *


We appreciate the steps the District has already taken to address the conditions identified and look forward to working collaboratively with the District to comply with its EEOA obligations moving forward. We have enclosed a proposed settlement agreement for the District's consideration. Please contact Natacha Lam (Natacha.Lam@usdoj.gov) to schedule a telephone settlement conference.

Sincerely,

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