



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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September 12, 2024

William Gregory, Executive Director  
Legacy Traditional Schools  
3201 South Gilbert Road  
Chandler, Arizona 85286

via email to [redacted content]

Re: Legacy Traditional Schools – OCR Compliance Review 08-23-5001

Dear Mr. Gregory:

This letter notifies you of the resolution of the compliance review conducted by the U.S. Department of Education, Office for Civil Rights (OCR) of Legacy Traditional Schools' charter schools in Arizona (LTS). OCR initiated the compliance review to examine whether, during school year (SY) 2021-22 and SY 2022-23 (the Review Period), LTS schools discriminated against: (a) national origin minority students on the basis of limited English proficiency by failing to provide them with the language assistance services that LTS had determined were necessary to participate meaningfully in the schools' educational programs; and (b) national origin minority parents with limited English proficiency (parents with LEP) by failing to adequately notify them of, and ensure they had comparable access to, school-related information that is provided to parents in English. OCR initiated this compliance review under Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) §§ 2000d *et seq.*, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination on the basis of race, color, and national origin in any program or activity operated by a recipient of federal financial assistance from the Department. The regulation at 34 C.F.R. § 100.7(a) requires OCR to conduct periodic compliance reviews of the Department's recipients to determine their compliance with Title VI and its implementing regulations. LTS schools receive funds from the Department and therefore must comply with Title VI and its regulations.

**I. Summary of OCR's Compliance Review and Findings**

After careful review of the evidence obtained during the compliance review, OCR identified the following violations of Title VI and its implementing regulations:

1. LTS failed to timely identify some English learner (EL) students and failed to consistently notify their parents, in a language they could understand, of their student's identification as an EL, placement in an EL program, and right to opt out of that program;

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2. LTS failed to provide some EL students with language assistance services (EL services);
3. LTS lacked enough teachers who were qualified to implement its EL program;
4. LTS administrators were not trained to evaluate teachers who provided EL program services so that LTS could evaluate whether the teachers were qualified to implement the EL program and whether their EL services were effective;
5. LTS lacked adequate and appropriate resources, including instructional materials, to implement its chosen EL program effectively;
6. LTS did not adequately monitor current EL students' content knowledge, which is necessary to evaluate if they can meaningfully access the standard instructional program, and did not take affirmative steps to ensure that struggling EL students could access it;
7. LTS failed to monitor the academic progress of all former EL students to determine if they have overcome their language barriers and are able to participate in the standard instructional program comparable to their never-EL peers;
8. LTS failed to periodically evaluate the effectiveness of its EL programs and modify these where necessary; and
9. LTS knew of parents who needed language assistance, had some interpreters and translations available, and yet failed to notify some parents of essential information about LTS programs and activities called to the attention of non-LEP parents in a language the parent with LEP understand.

Regarding OCR's ninth finding above, OCR also has a compliance concern that some parents' decisions to opt their child out of EL services at two LTS schools may not have been knowing or voluntary because the evidence revealed the schools' failure to provide parents with LEP with information about the EL program services in a language they understand so that they could make an informed decision to waive their child's right to EL services. Lastly, OCR also has a concern that LTS schools may not be providing EL students with equitable instructional space for their English Language Development (ELD) classes by providing them with some targeted ELD instruction in the cafeteria instead of classrooms where non-EL classes are held.

LTS entered into a resolution agreement (the Agreement) to address the violations and compliance concerns OCR identified in this compliance review. This letter explains OCR's methodology for the compliance review; the applicable legal standards; OCR's investigative findings, legal analysis, and conclusions; and the terms of the Agreement. When fully implemented, the Agreement will resolve this compliance review.

## **II. Background**

LTS is a network of charter schools located in Arizona, Nevada, and Texas. There are 22 LTS schools in Arizona, including one K-8 virtual school – Legacy Online Academy (LOA); two brick-and-mortar schools in Tucson – East Tucson (K-6) (E. Tucson) and Northwest Tucson (K-8) (N.W. Tucson); and 19 brick-and-mortar schools in the Phoenix Metropolitan Area – Avondale (K-8), Casa Grande (K-8), Chandler (K-8), Deer Valley (K-6), East Mesa (K-8) (E. Mesa), Gilbert (K-8), Glendale (K-8), Goodyear (K-6), Laveen (K-8), Maricopa (K-8), Mesa (K-6), North Chandler (K-8) (N. Chandler), North Phoenix (6-8) (N. Phoenix), Peoria (K-7), Phoenix (K-5), Queen Creek (K-8), San Tan (K-8), Surprise (K-8), and West Surprise (K-8) (W. Surprise). Each LTS school is its own local educational agency (LEA), except LOA, which is an

extension of Surprise. All LTS schools were open during both SY 2021-22 and SY 2022-23, except San Tan, which opened in SY 2022-23.

LTS schools are managed by Vertex Education (Vertex), a private company based in Chandler, Arizona. Among the services Vertex provides are academic support and oversight, curriculum development, and compliance with state and national regulations. During the Review Period, LTS schools were overseen by two regional superintendents, three deputy superintendents, and three principal coaches, all of whom were Vertex employees. Each LTS school had its own principal and assistant principal (AP). The APs also served as their school's EL coordinator and school test coordinator.

During SY 2022-23, according to Arizona Department of Education (ADE) data, LTS schools served approximately 22,338 students. The combined student population for all LTS schools was approximately 40.5% Hispanic, 38.7% White, 7.7% Black or African American, 5.2% Asian, 0.9% American Indian or Alaska Native, 0.4% Native Hawaiian or Pacific Islander, and 6.7% multi-racial. ADE data show that, on October 1, 2022, LTS schools had 1,058 EL students, who accounted for about 5.0% of LTS schools' combined student population. By comparison, about 9.2% of all public elementary and secondary school students in Arizona are identified as EL students. LTS schools had these percentages of EL students during SY 2022-23: Laveen-11.8%, Phoenix-10.4%, Goodyear-7.4%, Deer Valley-7.3%, Avondale-7.0%, Casa Grande-6.3%, N. Chandler-5.7%, E. Tucson-5.6%, Glendale-5.2%, N. Phoenix-4.9%, Chandler-4.3%, Peoria-4.0%, Mesa-3.8%, E. Mesa-3.6%, LOA-3.5%, San Tan-3.4%, Gilbert-3.4%, Surprise-2.9%, Maricopa-2.9%, N.W. Tucson-2.4%, W. Surprise-2.2%, and Queen Creek-1.5%.

According to data provided by Vertex to OCR in March 2023 (the Master Spreadsheet), during the Review Period, LTS schools enrolled 1,357 EL students, including: 144 EL students who had been withdrawn from LTS schools between July 20, 2022 and February 27, 2023; 95 EL students (7%) whose parents had opted them out of EL services; and 1,118 students currently receiving EL services. The EL students' overall English proficiency level on the Arizona English Language Learner Assessment (AZELLA), the State's English Language Proficiency (ELP) assessment, ranged as follows: 199 were at the "pre-emergent/emergent" level, 304 at "basic," 171 at "basic/intermediate," and 443 at "intermediate." LTS also reported 211 former EL students who had been reclassified and exited from EL services because they scored proficient on the AZELLA. Among the 1,568 current and former EL students, the most common primary languages were Spanish (895 students, 57.1%), English (425 students, 27.1%), and Arabic (50 students, 3.2%). Twenty-nine other languages were the primary language of at least one EL student.

Arizona law requires school districts and charter schools, including LTS schools, to educate EL students using: (a) a Structured English Immersion (SEI) model that is pre-approved by the State Board of Education (SBE); or (b) a different SEI model or alternate program model that is approved by the SBE after the school district or school applied. Arizona Revised Statutes (A.R.S.) § 15-756.02. Arizona law defines SEI as an "English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language." A.R.S. § 15-751(5). Books and instructional materials are in English; all reading, writing, and subject matter are

taught in English; and, although teachers may use a minimal amount of a child's native language when necessary, no subject matter can be taught in any language other than English. *Id.* The SBE has approved three SEI models: the "pull-out" model, the "two-hour model," and the "newcomer model."

According to Vertex, LTS schools use the pull-out SEI model. Although LTS schools failed to evaluate if this model is effective, data available on the ADE website reveals that LTS schools' EL students perform significantly worse, as a group, than LTS schools' non-EL students on statewide assessments. For example, in 2022, 0% to 21% of EL students, depending on the school, were proficient or highly proficient in English language arts (ELA), and 0% to 25% were proficient or highly proficient in math. No EL students were proficient in reading at nine LTS schools and none was proficient in math at eight LTS schools. According to ADE's "School Report Cards," across all LTS schools, the average percentage point gaps between the percent of all students who were proficient in reading and math versus the percent of EL students who were proficient in reading and math were 48.6 and 34.7, respectively.

### **III. Methodology**

OCR requested and reviewed extensive information and records from Vertex and LTS schools. The information and records included various forms; policies, procedures, and handbooks; employee training materials; data about EL students, parents with LEP, and employees; narrative descriptions of processes and programming; and audits and evaluations. OCR also interviewed Vertex's Vice President of Exceptional Student Services; Director of Curriculum, Instruction, and Assessment; Director of Compliance; Senior Director of Brand and Marketing; Arizona East Superintendent; Arizona West Superintendent; and District Test Coordinator.

OCR collected further information from the following 11 LTS schools (the Selected Schools): Avondale, Chandler, E. Tucson, Goodyear, Laveen, LOA, Maricopa, N. Chandler, N. Phoenix, N.W. Tucson, and Phoenix. OCR selected schools that represented different geographic regions (i.e., the Tucson area and the western, eastern, and southern areas of the Phoenix Metropolitan area); were recipients of different school letter grades (i.e., A, B, and C) from the ADE; had a low percentage of EL students relative to the nearest elementary schools in traditional school districts; had a high number of EL students who withdrew from the school, opted out of EL services, or had a primary language other than Spanish. OCR also considered the size of the gap between standardized test scores for EL students and non-EL students.

OCR interviewed these employees at the Selected Schools: (a) the AP at each school; (b) the instructional coach (IC) at the nine schools that had one during SY 2022-23; (c) the registrar at seven schools; (d) a designated EL teacher at each of the schools that had one during SY 2022-23; (e) teachers from various grade levels; and (f) others, including reading specialists, specials teachers (e.g., art and Spanish), and a school psychologist. OCR also reviewed 328 student files from the 11 schools (the Selected Files).

#### IV. Legal Standards

In reaching its findings of fact and legal conclusions detailed below, OCR applied the following general legal standards under Title VI. OCR also applied more specific legal standards as set forth under each subheading that corresponds to the Title VI violations and concerns OCR found.

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits or, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d-1. The Title VI regulation at 34 C.F.R. § 100.3(a) mirrors the statutory mandate. The Title VI regulation at 34 C.F.R. § 100.3(b)(1) specifies prohibited discriminatory actions including, among others, that a recipient may not: (a) deny an individual any service or other benefit of its programs on the basis of race, color, or national origin; or (b) provide different services or other benefits or provide them in a different manner from that provided to others in similar circumstances on the basis of race, color, or national origin. The Title VI regulation at 34 C.F.R. § 100.3(b)(2) provides that, in determining the types of services, benefits, or facilities 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.

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court determined that where the inability to speak and understand English excludes national origin minority students from effective participation in a recipient school district’s program, the district must take affirmative steps to ensure that the EL students can meaningfully participate in the district’s programs to effectuate Title VI’s nondiscrimination mandate. In reaching this determination, the Supreme Court relied on the Title VI regulations, including all of those cited above, stating: “It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations.” *Id.* at 568. Subsequent to *Lau*, the federal Ninth Circuit Court of Appeals, which covers Arizona, confirmed that Title VI requires a state education agency (SEA), and by extension LEAs, “to ensure that needs of students with limited English language proficiency are addressed.” *Idaho Migrant Council v. Board of Educ.*, 647 F.2d 69, 71 (9th Cir. 1981).

OCR has long interpreted Title VI to require that recipient public school districts meet the legal standards established in the case of *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir.1981), as part of taking the requisite affirmative steps to ensure that EL students can meaningfully participate in their education programs. OCR has notified the Department’s recipients repeatedly since 1985 that it applies *Castañeda*’s standards when assessing if a recipient has complied with the Title VI obligation to provide EL students with meaningful access to its programs. Those standards include this three-prong test:

1. Does the school district provide an EL program that has an underlying educational theory recognized as sound by experts in the field of EL education or considered a legitimate experimental strategy?
2. Are the programs and practices used by the school district reasonably calculated to implement the educational theory underlying the district’s EL program effectively? In

other words, does the district follow through with practices, resources, and personnel necessary to transform the theory underlying its chosen EL program(s) into reality?

3. Does the district evaluate the effectiveness of its EL program after a legitimate trial and do its results indicate that EL students' language barriers are actually being overcome within a reasonable period of time?

648 F.2d at 1009-10.

#### **A. Identifying EL Students, Notifying Their Parents, and Program Placement**

Consistent with case law, OCR has long interpreted Title VI to require that public elementary and secondary schools (recipients) accurately and timely identify students who have a primary or home language other than English (PHLOTE students) students and determine if they are EL students through a valid and reliable assessment of English proficiency to ensure that ELs are identified and have their language needs addressed. *See Gomez v. Ill. State Bd. of Educ.*, 811 F.2d 1030, 1033-34, 1044-45 (7th Cir. 1987) (relying on *Idaho Migrant Council*, 647 F.2d at 71, and holding that a recipient SEA's alleged failure to ensure that recipient schools identify EL students with objective and adequate tests to ensure their needs are addressed stated viable claims under Title VI and the Equal Educational Opportunities Act (EEOA); *Rios v. Read*, 480 F. Supp. 14, 23 (E.D.N.Y. 1978) (requiring a school district to use "objective validated tests conducted by competent personnel" to identify EL students under Title VI and the EEOA); *Cintron v. Brentwood*, 455 F. Supp. 57, 64 (E.D.N.Y. 1978) (requiring a school district to use "validated" tests of English proficiency under Title VI and the EEOA).

OCR interprets the Title VI duty to timely identify EL students consistent with related requirements of the Elementary and Secondary Education Act (ESEA), which the Department administers. These requirements include, among others, that LEAs using Title I or Title III funds for services to EL students notify parents of identified EL students of the reasons their child was identified as an EL, the child's level of ELP, and how the level was assessed; the method of instruction used in the EL program in which the child is or will be placed; the methods of instruction used in other available EL programs; the parent's right to decline enrollment in the EL program or withdraw their child from the EL program upon request, or to choose another EL program if available. ESEA § 1112(e)(3). This notice must be provided within 30 calendar days after the start of the school year or within the first two weeks of placing an EL student in an EL program for students who enroll after the school year starts. ESEA §§ 1112(e)(3)(A), 1112(e)(3)(B). The notice and information provided must be provided in a language the parents can understand to the extent practicable. *Id.* § 1112(e)(4).

OCR interprets these ESEA parental notification requirements consistent with the Department's longstanding interpretation that Title VI requires meaningful communications of school activities to parents with LEP in a language they understand. *See* 35 Fed. Reg. 11595 (July 18, 1970). Therefore, if a written translation of the parental notice is not practicable, recipients must provide this notice to parents with LEP using free oral interpretation to ensure their child's ability to participate meaningfully in the recipient's programs.

## **B. Language Assistance Services for EL Students**

A recipient must provide EL students with language assistance services that are educationally sound in theory and effective in practice until they are proficient in English and can participate meaningfully in the recipient's educational programs without language assistance services. *See Castañeda*, 648 F.2d at 1009-10. 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. *Id.* at 1010. To ensure that an EL student is placed in an educationally sound EL program that is reasonably calculated to attain both goals within a reasonable period of time, each EL's ELP (e.g., basic or advanced), grade level, educational background (e.g., students with identified disabilities or students with limited or interrupted formal education (SLIFE)), and language background for bilingual programs (e.g., EL students should be Spanish proficient for placement in bilingual Spanish programs) must be considered to determine which EL program services are appropriate for the student.

Under prong two of *Castañeda*, OCR evaluates if the recipient schools have the personnel, practices, and resources needed to transform the theory underlying their chosen EL program(s) into reality. *See Castañeda*, 648 F.2d at 1010. First, recipients must have an adequate number of teachers who are qualified to provide the language assistance services of the schools' EL programs. *Id.* at 1013 (holding that "qualified teachers are a critical component of the success of a language remediation program"). Where formal teacher qualifications have been established by the SEA (e.g., the SEA requires an ESL certification to teach in ESL programs), recipients must either hire teachers who already have the necessary formal qualifications to teach EL students or require that teachers already on staff be trained or work towards attaining those qualifications and obtain them within a reasonable period of time. *See id.* at 1005, 1013. In some instances, however, SEA endorsements or other requirements may not be rigorous enough to ensure that teachers of EL students have the skills necessary to carry out the school's chosen EL program. *See id.* (determining noncompliance because some district teachers of bilingual classes were not qualified to teach them despite having completed the state's teacher preparation program). Paraprofessionals, aides, or tutors may not take the place of qualified teachers and may be used only as an interim measure while a recipient hires, trains, or otherwise secures enough qualified teachers to serve its EL students. *See id.*

Recipients that provide EL teacher training are also responsible for evaluating if their training adequately prepares teachers to implement the EL program effectively. *See id.* (directing the state and district to develop an improved in-service training program and adequate evaluation process to ensure that teachers completing the program were qualified to teach bilingual classes). To meet this obligation, recipients 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. *See Rios*, 480 F. Supp. at 18, 23-24 (finding a violation, in part, because the district administrator who evaluated bilingual teachers lacked the skills and training to evaluate them).

Regarding resources under *Castañeda*'s second prong, recipients must have adequate and appropriate instructional materials to effectively implement their chosen EL program(s). In this

compliance review, this means having adequate quantities of ELD materials available at the appropriate ELP and grade level to meet the language needs of EL students in the ELD pull-out component of the LTS' SEI program. *See Castañeda* 648 F.2d at 1010 (requiring adequate resources to implement EL programs); *see also Lau*, 414 U.S. at 566 (finding no equality of treatment under Title VI when a district uses the same curriculum and materials for EL and non-EL students because the former cannot comprehend them and meet graduation requirements).

### **C. Monitoring and Exiting EL Students**

Recipients must monitor the progress of their EL students in achieving ELP and acquiring content knowledge using valid and reliable tests to ensure that EL students are able to meet the dual goals of the EL program discussed in *Castañeda* – acquisition of English and parity of participation in the standard instructional program within a reasonable period of time. *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.”). Monitoring ensures that EL students are making appropriate progress with respect to acquiring English and content knowledge while in the EL program. Recipients should establish rigorous monitoring systems that include benchmarks for expected growth in English proficiency and acquiring academic content knowledge during the academic year and take appropriate steps to assist students who are not adequately progressing towards those goals. The 1970 Memorandum that the Supreme Court relied upon in *Lau* notified recipients that they may not operate EL programs like dead-end tracks and must exit students from these programs when their language needs are met as soon as possible. 35 Fed. Reg. 11595 (July 18, 1970).

After students have exited an EL program, recipients must monitor the academic progress of former EL students for a period of time to ensure that they have not been prematurely exited, any academic deficits they incurred as a result of participation in the EL program have been remedied, and they are meaningfully participating in the standard instructional program comparable to their never-EL peers. OCR interprets exit criteria and this monitoring period under Title VI consistent with the Department’s ESEA requirements governing its recipients, which require standardized exit criteria using valid and reliable tests of ELP and four years of monitoring EL students’ academic achievement after they have achieved ELP on the test. *See* ESEA §§ 3113(b)(2), 3121(a)(5).

### **D. EL Program Evaluation**

Recipients must periodically evaluate their EL programs and modify the programs when they do not produce adequate results. *Castañeda*, 648 F.2d at 1010. To assess whether an EL program is succeeding in overcoming language barriers and enabling parity of participation in the standard instructional program within a reasonable period of time, recipients must compare the academic performance of current EL students, former EL students, and never EL students. *See id.* at 1014 (“The progress of limited English speaking students in these other areas of the curriculum must be measured by means of a standardized test ... because no other device is adequate to determine their progress vis-a-vis that of their English speaking counterparts.”). Districts also must disaggregate the standardized test data of current and former EL students by EL program. *See Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 137-38 (3rd Cir. 2017) (discussing district’s failure



to evaluate the effectiveness of each EL program with disaggregated data to see if certain programs are working and others are not). The disaggregated EL program evaluations require accurate data that permit a comprehensive and reliable comparison of how EL students in the EL program, EL students who exited the program, and never-EL students are performing on criteria relevant to participation in the recipient's educational programs over time (e.g., graduation rates, retention rates, and participation in honors, Advance Placement, and other specialized courses). Meaningful EL program evaluations require longitudinal data that compare the performance of never-EL students in the core content areas, graduation, dropout, and retention data for EL students as they progress through the EL program to determine if it is reasonably calculated to enable EL students to achieve English proficiency and parity of participation in the education programs. *See Castañeda*, 648 F.2d at 1014; *see also Horne v. Flores*, 557 U.S. 433, 464 n. 16 (2009) ("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).

### **E. Meaningful Communication with LEP Parents**

Consistent with the longstanding interpretation of Title VI in the 1970 Memorandum, recipients have an obligation to adequately notify parents with LEP of information about any program, service, or activity of a recipient that is called to the attention of non-LEP parents by meaningfully communicating the information in a language parents understand. 35 Fed. Reg. 11595 (July 18, 1970). The 1970 Memorandum recognized that the nondiscrimination mandate of Title VI could not be effectuated with respect to national-origin minority students unless their parents received information about the recipient's programs and activities in a language the parents understood. In the absence of such information, EL students are effectively excluded and denied the ability to participate in the recipient's programs on the basis of national origin in violation of the Title VI regulations whether those programs are EL programs, special education programs, gifted and talented programs, career and technical education programs, magnet programs, pre-K programs, or extracurricular activities. Meaningful access to these programs also requires that the recipient's collection of information from parents that is needed to participate in these programs be translated or interpreted. For example, if the permission slip for a school field trip or the school's request for consent to evaluate a child for a disability are issued only in English, a parent with LEP may not understand the requested permission and their child will be denied the chance to participate in the trip or be evaluated for special education.

To ensure compliance with Title VI and its regulations, OCR assesses whether the Department's recipients are providing parents with LEP comparable access to information that is provided to parents in English about school programs and activities by using qualified interpreters and translators to communicate this information. This essential information includes language assistance programs, special education and related services, individualized education program (IEP) team meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, and any other school and program choice options. *See, e.g., H.P. v. Board of Educ. of the City of Chicago*, 385 F. Supp. 3d 623, 638 (N.D. Ill. 2019) (denying a school district's motion to dismiss plaintiff's Title VI claim in a case seeking district translation

of IEPs and other special education documents and adequate interpretation at IEP meetings for parents with LEP); *T.R. v. Sch. Dist. of Philadelphia*, 223 F. Supp. 3d 321, 333-35 (E.D. Pa. 2016) (same).

To ensure national-origin minority students are not excluded from participation in recipient programs and activities in violation of Title VI, recipients must have a process for identifying parents with LEP and what their language needs are.

Recipients must provide language assistance to parents with LEP effectively with appropriate and competent interpreters and translators who are either on staff or from outside resources. To ensure comparable access to the information brought to the attention of English-proficient parents, recipients should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue. In addition, recipients should ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality. Recipients may not rely on or ask students, siblings, friends, or untrained school staff to translate or interpret for parents with LEP.

#### **F. ELs Who are Opted Out of EL Services**

To provide EL students with a meaningful opportunity to participate in a school district's programs, the district must provide them with specialized instruction designed to overcome their language barriers through an educationally sound EL program. *See Lau*, 414 U.S. at 566; *Castañeda*, 648 F.2d at 1009. Parents may waive their child's right to EL program services under Title VI, but this decision must be informed and voluntary. *See, e.g., Town of Newton v. Rumery*, 480 U.S. 386, 393 (1987) (any waiver of statutory right of action must "be the product of an informed and voluntary decision"); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 n.15 (1974) (waiver must be "voluntary and knowing"). Recipients may not recommend that parents decline all or some services within an EL program because this puts pressure on the parents to waive their child's right to EL program services. For parents to understand their right to waive such services, information about the program services being offered needs to be in a language the parents can understand to ensure that any waiver is knowing and voluntary.

If parents opt their child out of an EL program or specific EL services, the child retains their status as an EL, and the recipient remains obligated to take the affirmative steps required by Title VI to provide these national-origin minority EL students access to its educational programs; otherwise, the recipient will continue to deny meaningful access based on national origin in violation of Title VI. To ensure that all EL students have meaningful access to a recipient's programs, recipients must periodically monitor the progress of students who have opted out of EL programs or certain EL services. If an EL who opted out of a recipient's EL programs or services does not demonstrate expected growth in English proficiency or struggles in one or more subjects due to language barriers, the recipient's affirmative steps under Title VI include informing the EL student's parent of their lack of progress and re-offering EL services to the student. If a recipient's monitoring of an opted-out EL shows the student is struggling but the student's parent continues to decline the EL program or services, the recipient should take affirmative and appropriate steps to meet its Title VI obligation.

Consistent with this civil rights obligation, the ESEA requires the Department's recipients to annually assess the ELP of opted-out EL students to gauge their progress in attaining English proficiency and to determine if they are still in need of and legally entitled to EL services and related Title I and Title III funding under the ESEA.

## **V. Findings of Fact and Analysis**

Below OCR sets forth its factual findings regarding LTS' EL practices and programs based on the evidence obtained in this compliance review from multiple witnesses, documents, and data. The preponderance of that evidence analyzed under the general legal standards above and the more specific standards below establishes that LTS failed to take the affirmative steps needed to: consistently identify all EL students in a timely way; provide them with the EL program services required by its chosen pull-out SEI model with the staff, materials, and curriculum needed to implement that model effectively; monitor EL students' progress individually and as a group; and to evaluate if the pull-out SEI model was enabling EL students to attain English proficiency and parity of participation in the standard instructional program within a reasonable period of time. The evidence further revealed that LTS knows it has parents with LEP who need interpreters and translations of school information brought to the attention of other parents, has some interpreters and translators on staff and through external sources to meet those needs, and yet repeatedly denied parents with LEP comparable access to this essential school information, thereby treating them differently on the basis of national origin and effectively excluding their children on the same basis from LTS programs and activities.

### **A. Failures to Timely Identify and Place EL Students in EL Programs**

As explained below, OCR found that LTS schools generally use a home language survey (HLS) to identify PHLOTE students, test PHLOTE students with the AZELLA to determine if they are EL, and notify their parents if they are EL based on the AZELLA. OCR further found that LTS schools know that they must timely place identified EL students in their SEI pull-out program unless their parents opt out of this placement. Despite this knowledge, OCR determined that LTS schools do not consistently timely identify EL students or place them in an EL program, nor do LTS schools consistently notify the parents in a language they understand that the students have been identified as EL and placed in an EL program with a right to opt out of that program.

OCR found that LTS schools accurately and timely identified PHLOTE students using the HLS in the enrollment process. However, LTS schools did not consistently evaluate their ELP or place EL students in EL services in a timely manner. OCR also found that LTS schools failed to consistently timely notify parents, within 30 days from the beginning of the school year and in a language parents understand, regarding their student's identification as an EL and placement in a language instruction educational program.

Generally, LTS schools accurately and timely identified PHLOTE students using an HLS in the enrollment process. To initially identify potential EL students, LTS schools send admitted students' parents an online registration packet to complete. The packet includes a HLS with the following questions: "What is the primary language used in the home regardless of the language spoken by the student;" "What is the language most often spoken by the student;" and "What is

the language that the student first acquired?” When a parent answers “yes” to any of the HLS questions, the student is considered a PHLOTE student.

Based on review of the Selected Files, OCR found that LTS schools did not consistently evaluate suspected EL students’ ELP or place identified EL students in an EL program in a timely manner. Arizona requires that LEAs administer an AZELLA placement test to PHLOTE students. (For purposes of this compliance review, OCR is not determining whether the AZELLA is a valid and reliable assessment of ELP.) Vertex expects LTS schools to test, within 30 days, new PHLOTE students who have not taken the AZELLA. According to the Master Spreadsheet, 155 EL students had more than 30 days elapse between their start date at their school and their initial AZELLA test, and for some the delay was substantial. For example, one student started at an LTS school on [redacted content], 2022, but was not given the AZELLA until four and half months later on [redacted content], 2022. Three PHLOTE students who enrolled in an LTS school on or before August 3, 2022, and who still attended an LTS school as of March 21, 2023, had no documentation of AZELLA testing.

Further, LTS schools failed to consistently timely notify parents regarding their student’s identification as an EL and placement in an EL program. OCR found that the time between the date of the student’s start at a school and the date of the parent notice ranged from 31 days to 394 days for students who started at an LTS school during the Review Period and were identified as EL students based on their nonproficient AZELLA scores. It was not uncommon for OCR to find that more than 100 days had elapsed between the program participation start date and the date of parent notice for some students.

OCR also found that LTS schools failed to consistently provide such notices in a language that parents understand. Five Selected Schools sent notice forms home in English only, and the APs at those schools responsible for following up with parents who did not return the form speak English only. Moreover, OCR did not find any evidence that LTS schools provided notice to parents in a language other than English or Spanish even though LTS schools enrolled students whose parents needed language assistance in other languages.

## **B. Failures to Provide EL Students with Targeted ELD Instruction**

As detailed below, LTS schools failed to provide many EL students with the ELD services required by their SEI pull-out program in part because LTS schools lack an adequate number of teachers who are qualified to implement the EL program. OCR also found that LTS school administrators were not trained to evaluate teachers who provide EL program services so that LTS could evaluate whether the teachers were qualified to implement the EL program and whether their EL services were effective. OCR further found that LTS lacked the instructional materials and curriculum needed to implement the core ELD component of its SEI program effectively, failed to consistently analyze whether EL students were acquiring ELP and content knowledge, and did not take affirmative steps to help certain EL students known to be struggling meaningfully access the standard instructional program.

As explained below, OCR found that LTS schools implemented the state-approved SEI pull-out model but failed to provide its core component services (targeted ELD) to many EL students

because LTS schools lacked enough qualified teachers to provide targeted ELD and SEI services under this model, lacked administrators who can evaluate if these teachers are qualified to effectively implement this model, and lacked the materials and curriculum needed to implement it.

As noted above, Arizona law directs charter schools, like LTS schools, and school districts to use an SBE-approved SEI model or a different SBE-approved alternate model for educating EL students. Arizona law further directs the SBE to adopt and approve research-based models of SEI for school districts and charter schools to use. A.R.S. § 15-756.01(A). All SEI models must include the following minimum amount of ELD: 120 minutes per day, 600 minutes per week, or 360 hours per school year for students in grades K-5; and 100 minutes per day, 500 minutes per week, or 300 hours per school year for students in grades 6-12. *Id.* As noted above, all LTS schools follow ADE's SEI pull-out model. To reach the 120-minute minimum for daily ELD, the pull-out model requires: (a) 60 minutes per day of integrated ELD instruction and 60 minutes per day of targeted ELD instruction for students in grades K-5; and (b) 50 minutes per day of integrated ELD instruction and 50 minutes per day of targeted ELD instruction for students in grades 6-12. The ELD minutes may be tracked per day, per week, or per year – as long as the total averages out to the daily minute requirements.

OCR found a Title VI violation because LTS schools generally were not implementing the SEI pull-out model as designed, nor were they providing their EL students with any other language assistance services that are educationally sound in theory and effective in practice. *See Castañeda*, 648 F.2d at 1010-11. Some LTS schools were not providing any ELD services to EL students, while EL students at other schools received inadequate and sometimes sporadic amounts, in violation of Title VI. *See id.* at 1011 (discussing the need for ELD to overcome language barriers); *Serna v. Portales Mun. Schs.*, 499 F.2d 1147, 1150 (10th Cir. 1974) (discussing the negative effects of placing EL students in a class taught in English without EL services); *see also Rios v. Read*, 73 F.R.D. 589, 595 (E.D.N.Y. 1977) (“An inadequate program is as harmful to a child who does not speak English as no program at all.”). In addition, OCR found that LTS schools lack adequate resources to implement the ELD classes in their chosen SEI pull-out model because there are no school- or network-wide ELD curricula or instructional materials. *See Castañeda* 648 F.2d at 1010; *see also Lau*, 414 U.S. at 566.

The LTS schools' “Parent & Student Handbook for Arizona” (Handbook) did not include a description of targeted ELD instruction. According to the ADE and Vertex, targeted ELD instruction should be focused on the state ELP standards to help EL students master them and thereby demonstrate proficiency on the AZELLA, and teachers should also attempt to incorporate the core curriculum when possible. According to Vertex, targeted ELD instruction can be provided in chunks throughout a day – e.g., 20 minutes, then 10 minutes, and then 30 minutes. LTS schools did not have designated ELD classes and purport to have provided ELD in such chunks.

However, when OCR asked employees at Selected Schools what targeted ELD instruction looked like at their school during SY 2022-23, the responses included: (a) EL students are not provided with targeted ELD instruction at all; (b) regular classroom teachers provide targeted ELD instruction one-on-one or in small groups in a separate space within the classroom; or (c)

EL students are pulled out of the classroom by another staff member (e.g., a Spanish teacher, aide, or reading specialist) for EL services in otherwise unused space (e.g., classroom, cafeteria, or conference room) within the school. Similarly, some employees told OCR that during SY 2021-22, their school did not provide any targeted ELD instruction – including the [redacted content] and a teacher at E. Tucson, two teachers at LOA, and four employees at N.W. Tucson. N. Chandler’s [redacted content] told OCR that the school “very inconsistently” provided targeted ELD instruction during SY 2021-22. Based on OCR’s interviews, OCR determined that all Selected Schools generally did not track the amount of targeted ELD instruction provided to students, and that none of the Selected Schools consistently provided EL students in all grades with the full amount of targeted ELD instruction required by the state-approved SEI model LTS chose to implement in the Review Period.

OCR found that LTS had no ELD curriculum or ELD materials to implement targeted ELD instruction and ensure the promotion of ELD across the four language domains (i.e., speaking, listening, reading, and writing). OCR asked employees what curriculum and instructional materials were used for ELD instruction, which is the core of the SEI pull-out program. Answers varied widely and included: making up activities and materials from scratch; finding things online; AZELLA practice tests and other test preparation materials; materials from ESL KidStuff or the University of Florida Literacy Institute; and supplements for EL students in standard curricula used by the school (e.g., Journeys K-6 ELA program, StudySync ELA curriculum, and enVision Mathematics). Ten employees told OCR that their school needed a curriculum for providing targeted ELD instruction. LTS employees – within and across schools – provided conflicting information to OCR about whether lesson plans were used for targeted ELD instruction. Some said yes, some said no, and some were unsure. Most interviewees told OCR that there was no LTS oversight of whether targeted ELD instruction was consistently provided. Most administrators said that they observed classrooms generally, not specifically evaluating ELD instruction.

Below is a summary of targeted ELD instruction practices at each of the Selected Schools that did not fulfill LTS’ Title VI obligations toward their EL students.

- At Avondale, for grades 6-8, according to the [redacted content], the school struggled to provide targeted ELD services and EL students received only about 20 minutes per day, far less than the 50 minutes integral to the SEI model. A teacher told OCR that no targeted ELD instruction took place.
- At Chandler, during the first part of the school year, an aide pulled EL students out for about an hour a day to provide targeted ELD instruction in a vacant classroom. However, the aide left the school. Then, another aide helped to provide some targeted ELD instruction but stopped to help with state testing. During interviews with OCR, the [redacted content] said targeted ELD instruction was not consistently being provided because of staff turnover; a teacher said, “I couldn’t tell you the last time they were pulled; it’s been a while;” another teacher said, “not much during fourth quarter;” and a third teacher said she has an EL student who had not received targeted ELD instruction for the three months prior to the teacher’s interview with OCR.
- At E. Tucson, after the first semester, no targeted ELD instruction was provided to EL students in grades K-1. A [redacted content] teacher told OCR that she has a student with

the lowest level of English on the AZELLA (pre-emergent) who has never received targeted ELD instruction. For students in grades 2-4, the [redacted content] teacher testified that she pulled EL students for 60 minutes of ELD per day. However, a fourth-grade teacher told OCR that the [redacted content] teacher did not start pulling her EL students for ELD until second semester and then only once or twice per week. According to the [redacted content] teacher, no targeted ELD instruction was provided for EL students in grades 5-6. The [redacted content] teacher also told OCR that she did not have an SEI, ESL, or TESOL endorsement, nor any training about how to provide ELD or otherwise on how to instruct EL students.

- According to employees at Goodyear and data from Vertex, the two current EL students received targeted ELD instruction. The school's [redacted content] pulled the EL students and did activities with them that she made up. The school's [redacted content] pulled the same two EL students and had them do Rosetta Stone on a laptop. Neither the [redacted content] nor the [redacted content] were SEI-endorsed. When asked what targeted ELD instruction looks like, the [redacted content] said, "I suppose it's what I do," and the [redacted content] said she is unfamiliar with the term.
- At Laveen, the [redacted content] and [redacted content] told OCR that classroom teachers were supposed to provide targeted ELD instruction to small groups of EL students while non-EL students did independent work. However, the [redacted content] said teachers did not provide the ELD services consistently, and the [redacted content] said she did not know how much targeted ELD instruction time was supposed to be provided. The [redacted content] told OCR that she served a group of six EL students for 30 minutes one day a week. A [redacted content] teacher told OCR that EL students received five minutes of ELD one day a week and 10 to 15 minutes on the four other days.
- At LOA, classroom teachers provided 30 minutes of targeted ELD instruction in the morning and 30 minutes in the afternoon, while other students did asynchronous learning or eat lunch. Each teacher made up their own lessons. One teacher said the services did not start until a few weeks into the school year, when Vertex told them to start providing targeted ELD instruction, and then staff did not know what they were doing. Similarly, another teacher told OCR that staff were not provided with adequate guidance on providing targeted ELD instruction; instead, they were just told to have students practice for the AZELLA and help them master skills. One teacher shared that getting EL students to attend targeted ELD instruction periods was difficult, and sometimes none attended.
- At Maricopa, a [redacted content] told OCR that she provided EL students in grades K-6 with 20 to 35 minutes of ELD per day or less; and during seventh period [redacted content] class, she provided EL students in grades 7-8 with about 55 minutes per day four days a week, and for about 30 minutes one day a week. However, a [redacted content] teacher told OCR that her EL students were pulled out only about once a week for ELD instruction; and a [redacted content] teacher told OCR that her EL students were pulled out only about twice a week for 20 minutes.
- At N. Chandler, the [redacted content] did not know anything about targeted ELD instruction. The [redacted content] told OCR that EL students in grades K-3 were pulled out for an hour of ELD per day (except one day a week, when they were pulled out for 30 minutes), EL students in grades 4-5 were provided with services in small groups at the back of the classroom for an hour per day, and EL students in grades 7-8 had an [redacted

content] class for 52 minutes per day (except one day a week, when they had the class for 30 minutes) during which they were provided with targeted ELD instruction. However, two teachers said no targeted ELD instruction was provided.

- At N. Phoenix, which serves 39 EL students ranging from pre-emergent/emergent to intermediate English proficiency levels, employees told OCR that no targeted ELD instruction was provided. Vertex explained to OCR that the school did not provide pull-out targeted ELD instruction because the school did not have an EL teacher.
- At Phoenix, the [redacted content] told OCR that in grades K-1, some teachers did not provide targeted ELD instruction. A [redacted content] teacher told OCR that she worked with EL students one-on-one or in small groups for 15 minutes, three or four days per week. A [redacted content] teacher told OCR that she did not provide targeted ELD instruction. One of the school's [redacted content] told OCR that teachers were supposed to provide targeted ELD instruction in the back of the classroom while non-EL students did independent work, but it only happened when teachers had time, which was, on average, once a week for 20 to 25 minutes, far below the daily ELD amount of the SEI pull-out model that LTS chose to provide.
- At N.W. Tucson, from August to October 2022, teachers were supposed to provide targeted ELD instruction in their classrooms. However, one teacher told OCR that she was unfamiliar with the term targeted ELD instruction. Starting in October 2022, the school's [redacted content] pulled out small groups of EL students in grades K-6 for one hour per day four days a week and for 30 minutes one day a week. What happened for EL students in grades 7-8 was unclear. The [redacted content] said EL students could have chosen to take a "student achievement"/"study hall" elective during which targeted ELD instruction may have been delivered; and EL students who did not have the class may not have received any targeted ELD instruction.

OCR asked Vertex and LTS schools what supports they provided EL students outside of targeted and integrated ELD. According to Vertex, all LTS schools offered voluntary before and/or afterschool tutoring for EL students, at no cost to their parents. Employees at three schools, however, told OCR that their school did not offer tutoring specifically for EL students. Employees at another school said tutoring was only offered to EL students in grades K-2. Employees at two other schools shared that their schools did not start tutoring for EL students until October 2022.

According to Vertex, tutors were supposed to be SEI-endorsed and focus on ELP standards, but some EL tutors were not SEI-endorsed according to data from Vertex and school employees. Regardless, tutoring was not intended to replace any integrated or targeted ELD instruction during the regular school day, nor could these tutors serve as a replacement for SEI-endorsed teachers. *See Castañeda*, 648 F.2d at 1013 (holding that aides are not a substitute for qualified teachers and may be used only as an interim measure while teachers are hired or trained). There was no job/position description for EL tutors, there was no LTS-wide curriculum for EL tutoring, and there was no training for EL tutors except at one school. Employees at three schools noted the very low tutoring participation rate among EL students. Invitations to tutoring were sent to parents in English only at the three schools that reported low participation rates. Vertex is unaware of how many or what percentage of EL students participated in tutoring during the Review Period.



### **C. Failures to Provide Access to Core Curriculum through Integrated ELD**

As *Castañeda* explains, 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. 648 F.2d at 1010. However, OCR found that EL students at LTS schools did not have meaningful access to the core curriculum since some core teachers were not integrating ELD or SEI strategies into core content instruction.

During integrated ELD instruction, EL students are with their non-EL peers and teachers are supposed to integrate language and literacy development with grade-level content learning. Integrated ELD instruction involves regular classroom teachers conscientiously scaffolding, differentiating instruction, and using other SEI and ELD strategies to meet EL students' language needs so that they can meaningfully access the core content being taught while acquiring English proficiency. Integrated ELD instruction may occur within one or more content areas (e.g., ELA, science, art, math, etc.). Targeted ELD instruction involves EL students grouped together without non-EL students, usually by ELP level so the ELD can be targeted to their ELP level, with a focus on explicit English language instruction driven by performance indicators in the ADE's ELP Standards. The goal is to help EL students master the ELP standards needed to demonstrate proficiency on the AZELLA by targeting ELD instruction to those standards and performance indicators.

LTS schools' Handbook read:

During the integrated instructional time, all teachers implement SIOP (Sheltered Instruction Observation Protocol) teaching techniques, which benefit all students, into their lessons to make content more comprehensible for EL students. Instruction is periodically supplemented through differentiated instruction, such as manipulatives, graphic organizers, word banks, writing journals, language scaffolding, flashcards, and tutoring, tied to our classroom learning texts and materials covered. During the targeted language support time, students will be with their EL peers and receive direct instruction on their specific language needs.

According to Vertex, LTS schools try to ensure that integrated ELD instruction is happening during ELA. Teachers are supposed to note in their lesson plans how instruction will be modified for EL students, although there is no separate field for integrated ELD or SEI instructional strategies on the lesson plan template. ICs are supposed to review lesson plans each week to ensure ELD is planned for and provided. If ICs notice that teachers are not incorporating integrated ELD instruction into lesson plans and instruction, the ICs are supposed to notify their AP.

Most Selected Schools' employees whom OCR interviewed did not know how much integrated ELD instruction was supposed to be provided for EL students. Regarding when integrated ELD instruction happens: six employees said they were unsure or unfamiliar with the term; four employees said it was not happening at all; one IC said it happened "here and there," as an "after thought;" one IC said only about a quarter of teachers in grades 6-8 were doing it consistently; one AP said it was not being done with fidelity; and six employees said it happened "throughout

the day,” “all the time,” or “always.” Other responses included “at least one substantial activity per area of instruction,” “all the time” in ELA, “daily,” “not a lot,” “each subject,” 30 minutes per day, 235 minutes per day, 50% of the day, and once a week during tutoring.

OCR asked employees at Selected Schools what strategies they used for integrated ELD instruction. The most common answers were pictures and visuals; acting things out, gestures, hand signals, and pointing at objects; having EL students work with bilingual non-EL students (e.g., for “buddy work,” “think-pair-share,” translation, and interpretation); and checks for understanding, graphic organizers, and chunking/breaking down content and tasks. Other integrated ELD instruction strategies reportedly being used included calling on EL students, speaking more slowly, speaking Spanish, and walking around to ask students if they needed extra help. Multiple staff members told OCR that what they did for integrated ELD instruction for EL students was no different than how they differentiated instruction for all struggling students.

OCR asked employees at Selected Schools whether integrated ELD instruction was included in teachers’ lesson plans. Employees at three schools said it was not included. Employees at five schools said ELD standards were included, but they did not say that integrated ELD instruction strategies were included. Employees at one school said they started adding ELD standards, but not necessarily integration instruction strategies, to lesson plans in October 2022. The AP at that school told OCR that it was still not happening with fidelity. Another AP said, per a directive from Vertex, they started adding it to lesson plans the week before OCR’s visit. Teachers at that AP’s school said staff were told, the week before OCR’s visit, to update their lesson plans to include ELD standards.

Similarly, an IC said that her school had incorporated ELD standards since the beginning of SY 2022-23 but did not include integrated instruction activities until they were told to do so a few weeks before OCR’s visit. A third AP told OCR that she started reviewing lesson plans for integrated ELD instruction only after OCR opened this compliance review. Another IC said teachers were only “marginally” incorporating integrated ELD instruction into lesson plans. At one school, two teachers and the IC said integrated ELD instruction was part of lesson plans, a third teacher said it was not part of lesson plans, and the AP said it was not done with fidelity. At another school, one employee said it was included, one employee said it was not included, three employees said only ELD standards were included (not integrated instruction activities), the IC said getting teachers to include the standard was “like pulling teeth,” and the AP said he was unsure. Some employees noted that no one checked lesson plans to ensure integrated ELD instruction was incorporated.

#### **D. Insufficient Staffing to Implement LTS’ EL Program**

OCR found that LTS schools lacked enough qualified staff to implement the critical ELD and SEI components of the SEI pull-out program. In Arizona, an SEI endorsement is required for teachers who instruct EL students in an SEI model. AZ Admin. Code § R7-2-615(L). To be SEI endorsed, a teacher must have an Arizona elementary, secondary, special education, career and technical education, early childhood, pre-K through 12 teaching, supervisor, principal, or superintendent certificate; and one of the following: three semester hours of courses related to teaching the ELP standards adopted by the SBE; 45 hours of professional development in

teaching the ELP standards adopted by the SBE; or a passing score on the SEI portion of the Arizona Teacher Proficiency Assessment. AZ Admin. Code § R7-2-615(L)(2). (For this compliance review, OCR is not making a determination regarding whether these endorsement requirements are sufficiently rigorous to ensure that teachers of EL students have the skills necessary to carry out SEI programs.) Rather, OCR assessed if LTS' teachers of EL students met at least these minimal state requirements for EL teachers and found that many did not.

During interviews, OCR learned that LTS schools' employees lacked an adequate number of skilled and highly qualified teachers to provide SEI and ELD services. OCR found that some employees who attempted to provide ELD services were not qualified to do so. They were not SEI-endorsed and had not received any training from their school or Vertex about serving EL students. Employees at one school told OCR that two aides provided most of the targeted ELD instruction. As mentioned above, some EL students were taught by paraprofessionals or teachers without EL qualifications. According to Vertex, LTS schools tried to place EL students with SEI-endorsed teachers but doing so was not always possible. One AP told OCR, "We just don't have enough SEI endorsed teachers." OCR asked employees if SEI-endorsed teachers collaborated with teachers who are not SEI-endorsed. Most of them said no.

Moreover, LTS schools' administrators had not been trained to evaluate teacher effectiveness in delivering targeted ELD instruction. *See Rios*, 480 F. Supp. at 18, 23-24. The training for APs, with respect to their EL coordinator roles, has been minimal and largely limited to complying with ADE's testing and recordkeeping requirements. According to Vertex, before the start of each school year, as part of its "Summer Leadership Training Program," it trains APs about Arizona's SEI model requirements. The presentation used on June 28, 2022, included slides about parent consent forms and integrated and targeted ELD instruction. According to Vertex, school leaders are then supposed to train their staff about the SEI model that LTS chose. However, many employees told OCR that they have not received any training about serving EL students, from either their school or Vertex. Other employees told OCR that they received brief pre-service training from their school's AP. Four employees mentioned to OCR a voluntary breakout session during a Vertex training at the beginning of SY 2022-23. Phoenix's administrators provided staff professional development about incorporating integrated ELD instruction into lesson plans, SEI strategies, and procedures for EL students. OCR asked employees what, if anything, their school should do to better serve EL students. The most common response was staff training.

#### **E. Inconsistent Monitoring of Current EL Students' Progress**

As explained here, LTS schools did not adequately monitor the academic progress of current or former EL students to determine if they were overcoming their language barriers in a reasonable period of time and were able to participate in the standard instructional program comparable to their never-EL peers without EL services once exited from LTS' pull-out SEI program.

LTS schools generally monitored the progress of EL students in achieving ELP by having them take the spring AZELLA reassessment. Vertex provided APs with an AZELLA reassessment test training every December. According to Vertex, in about June each year, LTS schools receive the AZELLA reassessment results. However, according to the Master Spreadsheet, five students

were not retested in spring 2022, as required. Additionally, the Master Spreadsheet indicates that one student's most recent AZELLA test date was [redacted content], 2022; however, the student's cumulative file does not include evidence of testing since [redacted content], 2019.

LTS schools also had measures in place to monitor the progress of EL students in acquiring content knowledge, including statewide standardized tests, triannual benchmark tests, weekly class tests and assessments, and grades. However, OCR did not find evidence that LTS schools consistently assessed the content knowledge of EL students, which is necessary to evaluate whether the EL program is effective at overcoming EL students' language barriers and enabling their parity of participation in the standard instructional program. *See Castañeda*, 648 F.2d at 1010.

OCR asked employees at Selected Schools how they monitor EL students' acquisition of content knowledge and academic progress. Many employees said they were unsure. Other employees specified tools used to monitor all students, not just EL students. The most common response was standardized tests – specifically: Arizona's Academic Standards Assessment (AASA), which all Arizona public school students in grades 3-8 take for ELA and math; the Northwest Evaluation Association Measures of Academic Progress (MAP) benchmark tests for ELA and math; and Star Early Literacy assessments. Other responses included weekly tests and grades, report cards, and progress reports. However, most employees told OCR that their school did not look at academic performance data specifically disaggregated for EL students, thereby precluding the types of comparisons required to evaluate the effectiveness of the EL program under prong three of *Castañeda*.

Vertex provided to OCR an "Intervention Progress Monitoring Tracker" form and wrote, "All LTS schools use this tool or one that is similar to it." The form is a spreadsheet that has various fields, including for areas of concerns, instructional strategies, intervention start date and frequency, starting level of performance, and date for review. Vertex wrote to OCR:

This tool is used to track what interventions have been done for EL students and if they are responding to the intervention. Teachers update this as they complete their intervention time. If data shows that EL students require more intervention than the targeted instructional minutes, students are provided that in small groups or during before or after school tutoring. Tracking this data allows for teachers to determine if the EL students require more than English acquisition support.

However, no employees at Avondale, Chandler, N. Chandler, or N. Phoenix said they used the form. The AP at one school said she had never seen the form. At other schools, some employees said they were unaware of the form.

OCR asked employees at Selected Schools what their school does for EL students who are struggling academically. The most common answer was tutoring. The second most common answer was that they did not know or were unsure. Other answers included contact EL students' parents, "office hours," "put them next to a bilingual student," summer school, and interventions during targeted instruction.

## **F. Inadequate Monitoring of Reclassified/Exited Students**

As noted in the Legal Standards section above, recipients must monitor the academic progress of former EL students after they have exited an EL program to determine if they are able to participate comparably to their never-EL peers in the standard instructional program without EL services and whether the EL program is effective. However, the Selected Files for E. Tucson, Laveen, N. Chandler, N. Phoenix, and Phoenix show that they failed to complete monitoring forms for former EL students. Therefore, OCR found that LTS schools failed to adequately monitor the academic progress of former EL students to determine if its SEI pull-out model was effective.

Once EL students score proficient on the AZELLA, their LTS school exited them from receiving EL services and reclassifies them as a non-EL. Arizona requires its LEAs, including LTS schools, to monitor EL students once reclassified and provides a state-created form titled “Two-Year Monitoring Form for Fluent English Proficient Students” (the Monitoring Form). The form has spaces for two years of statewide, districtwide, and schoolwide assessment data; other criteria used for monitoring and teacher comments; and the signature of the individual responsible for monitoring in year one and year two. Vertex informed OCR that, at the end of each year of monitoring, an exited student’s teacher should complete the Monitoring Form with all applicable assessment, tutoring, and observation information regarding the student’s progress.

During interviews OCR learned that most staff at Selected Schools were unaware of the Monitoring Form. Selected Files show that, generally, APs who fill out the form do so by simply recording benchmark test score data. The E. Tucson [redacted content] told OCR that she only learned about and started using the Monitoring Form in the weeks leading up to OCR’s visit. Few Monitoring Forms included class grades, tutoring information, observation notes, or other information. OCR reviewed the Selected Files for exited students and found the following:

- At Laveen, the three exited students all scored proficient on the AZELLA in [redacted content] 2022. However, their files did not include Monitoring Forms.
- At N. Chandler, there were blank or incomplete monitoring forms for 13 students.
- The N. Phoenix [redacted content] told OCR that she does not know who is responsible for monitoring exited students. All five exited students’ files included a Monitoring Form; however, all the forms were signed and dated by the [redacted content] on the school day before OCR’s visit to the school. For one student, who scored proficient on the AZELLA on [redacted content], 2021, the form did not include any data.
- At Phoenix, four students who were exited in spring 2021 or 2022 had blank monitoring forms.

Some students struggled academically after they were reclassified. For example, a student at E. Tucson scored proficient on the AZELLA on [redacted content], 2021, and was reclassified. In spring 2022, the student scored level one on the AASA ELA. Level one means “minimal understanding, highly likely to need support to be ready.” The student’s quarterly grades during SY 2021-22 included Ds in grammar/writing, math, reading, science, and social studies. There was no evidence of the student at E. Tucson being monitored at the school. As an additional example, a student at N.W. Tucson scored proficient on the AZELLA on [redacted content],

2021. In spring 2022, the student scored level one on the AASA ELA. The student's quarterly grades during SY 2021-22 included Fs in [redacted content], an F in homework, a D in spelling, and a D in reading. No employees, at any of the Selected Schools, were aware of a student being exited and then receiving EL services again.

### **G. Failure to Periodically Evaluate the Effectiveness of the EL Program**

As detailed below, OCR's compliance review determined that LTS was not evaluating the EL programs for effectiveness, as required by the third prong of *Castañeda*. LTS schools have not periodically evaluated their EL programs, including during the Review Period. LTS has not compared the academic performance of EL students, former EL students, and never-EL students to assess if its SEI pull-out model is effective.

Each year, the District Testing Coordinator audits selected EL students' cumulative files to ensure the contents comply with state recordkeeping requirements. In 2022, the ADE completed monitoring of the EL programs for the LTS school called Surprise. The ADE found numerous compliance problems including that: (a) the school did not have a plan for providing effective activities related to the education of EL students; (b) 75% of HLSs did not have a legal parent signature and date; (c) 100% of files reviewed had dates for parental notification and consent regarding EL status and placement outside of the required timeline or did not have documentation of three attempts to obtain a parent signature; (d) 100% of applicable instructional schedules for when EL students were supposed to receive integrated ELD minutes had missing or incomplete documentation of the required instructional minutes; (e) 100% of the files of applicable teacher lesson plans did not address ELP standards and performance indicators and/or differentiated linguistic supports; and (f) 100% of applicable instructional schedules for when EL students were receiving the targeted ELD minutes had missing or incomplete documentation of the required instructional minutes per selected model. According to Vertex and LTS schools' employees, LTS schools have not otherwise evaluated their EL programs.

### **H. Failures to Provide Parents with LEP Comparable Access to Essential School Information**

This section explains how LTS schools were not providing parents with LEP comparable access to essential information about LTS programs and activities as English-proficient parents in violation of their Title VI obligation not to exclude individuals from participation in their programs and activities on the basis of national origin. Some of these schools knew of parents who needed this language assistance but fail to provide it, and other schools failed to provide it because they lacked a process for identifying the interpreter and translation needs of such parents.

OCR found that most LTS schools had parents with LEP and yet did not provide language assistance to these parents using appropriate and competent staff. As part of this compliance review, OCR requested a spreadsheet for each LTS school of all parents identified as in need of translation and/or interpretation during the Review Period. Vertex submitted spreadsheets to OCR and explained that campus administrators created the spreadsheets by searching email documentation, meeting notices and agendas, campus invoices, and student records. In other

words, LTS schools compiled spreadsheets of parents who had received translation or interpretation. Most parents with LEP in the spreadsheet had a primary language of Spanish. Other primary languages included Arabic, Chinese, Farsi, French, Japanese, “Other Indian,” Punjabi, Russian, and Vietnamese. Four LTS schools – E. Tucson, LOA, N. Phoenix, and Peoria – reported having not identified any parents in need of translation and/or interpretation. Five LTS schools – Casa Grande, Chandler, Gilbert, San Tan, and W. Surprise – reported having only one or two such parents. The LTS schools with the most parents identified as needing translation and/or interpretation were Laveen (34 parents), N. Chandler (28 parents), and Phoenix (23 parents).

Some LTS schools failed to provide competent language assistance to their parents with LEP; instead, they used students, students’ family members, and untrained staff to translate and interpret essential information about school programs and activities for parents with LEP. Other LTS schools did not even attempt to communicate this information to LEP parents in a language they understand. For example, at most Selected Schools – and for some communications at all Selected Schools – the following are communicated to parents in English only: recruitment, application, and registration information; student-parent handbooks; report cards and progress reports; newsletters; permission slips; flyers about campus events and programs; vision screening referrals; permission to administer medication to students at school; and information about academic assignments, academic difficulty and retention, and student discipline.

OCR identified several reasons for LTS schools’ failures to provide parents with LEP comparable access to school information brought to the attention of English-proficient parents during the Review Period. According to Vertex and LTS schools’ employees, LTS schools: (a) did not have policies, regulations, procedures, handbooks, or other guiding documents for communications with parents with LEP, including about translation or interpretation; (b) did not have a formal or uniform system or process to identify the language needs of parents, which may explain why four schools reported having none and five others reported having only one or two; (c) did not have a formal or uniform system or process to notify parents of available language assistance; (d) did not train staff about communication with parents with LEP; and (e) did not maintain lists of multilingual staff available to translate or interpret. Some employees told OCR that they assume which parents need translation or interpretation based on HLSs (which do not inquire whether a parent or guardian requires oral and/or written communication in a language other than English), informal communications with parents, or the ELP of the parent’s child. Other employees shared with OCR that they did not know which parents needed translation or interpretation.

According to employees at Selected Schools, for parents who needed interpretation or translation to Spanish, LTS schools used bilingual employees – typically, secretaries, registrars, aides, and Spanish teachers. However, these employees did not have specialized training regarding interpretation and translation, nor was their translation and interpretation overseen for quality assurances. Regarding translation and interpretation for parents with LEP whose primary language was not Spanish, employees at Selected Schools provided OCR with a variety of answers, including not knowing or being unsure, asking Vertex for help, using Google Translate or Pocketalk, using a language assistance phone service, or using a student’s family member. In

fact, 38 employees of 10 different LTS schools told OCR that students and family members (e.g., siblings, grandparents, etc.) interpret for parents.

According to Vertex, LTS schools were able to use a private company, for remote interpretation. Vertex wrote to OCR, “The services of [the company] have been contracted by individual campuses on an as needed basis since April 2020.” However, according to invoices for the company during the Review Period, only nine of the 22 LTS schools used the company. Each of the nine schools used the company between one and nine times. Moreover, during interviews with OCR, only three employees had heard of the company and only 11 other employees even knew there was an interpretation service phone number that could be used.

LTS schools’ websites are in English only and do not have a translation button. LTS schools share one Instagram account, one Twitter account, and one TikTok account, which are managed by Vertex and in English only. Each school has its own Facebook account. All LTS schools’ Facebook pages are in English only.

### **1. Information about Enrolling in LTS Schools**

OCR determined that LTS schools do not provide parents with LEP comparable access to essential application and enrollment information that LTS provides to English-proficient parents. All LTS schools use SchoolMint software to manage student applications and enrollment. Parents of prospective students complete an initial application online and must use SchoolMint. Parents can select an English or Spanish version of the application in SchoolMint; it is not available in other languages. However, the Spanish version of the application includes only half of the questions in Spanish. The questions in Spanish are the ones prepopulated by SchoolMint (questions 1-5, and 12), while the remaining questions added by LTS (questions 6-11) are in English only.

LTS offered prospective students a spot on a first-come first-served basis until the desired grade level at the desired school was at capacity. However, LTS gave preferences to siblings of current students, children of staff and board members, and returning students. The parents of students who were offered a spot were sent an email notifying them of the offer and telling them to complete the registration process in SchoolMint to complete enrollment. Parents who wished to proceed with enrollment were required to log in and accept the offer. SchoolMint had application acknowledgement and offer email templates available in English and Spanish. However, use of the Spanish versions was discretionary and varied by campus. For instance, the [redact content] and/or [redacted content] at E. Tucson, Laveen, and N.W. Tucson told OCR that their schools sent acknowledgement and offer emails only in English.

Students who are not offered a spot are placed on a waitlist. LTS schools send waitlist notices in English only. If a school has a waitlist but a nearby school has openings, Vertex may send a mass email to parents of students on the waitlist about the opportunity to enroll at the other school. LTS schools send the mass email in English only. At times, Vertex sends a “waitlist cleanup” email to parents on waitlists. The email asks parents to complete a “Waitlist Confirmation Form” to indicate that they wish to remain on the waitlist. Vertex sends the email and form in English only. Vertex removes the children of parents who do not complete the form from the waitlist.



Parents must complete the online registration packet within three days to one week, depending on the time of year. To complete enrollment, parents must also provide their child's birth certificate or other reliable proof of the child's identity and age, immunization records for the child, and proof of the child's residency in Arizona. Parents who submit a birth certificate must provide the birth certificate in English. So, parents must either have birth certificates in another language translated into English or submit another reliable proof of the child's identity and age. If a parent does not complete the registration packet by the deadline, the school's registrar can rescind the admissions offer. Alternatively, LTS schools may send parents one or more reminder emails and/or an email giving them a second chance to complete the form. The reminder and "second chance" emails are in English only.

LTS students must reenroll every year by having their parents complete forms in SchoolMint. LTS schools email parents a reenrollment reminder in January for the upcoming school year. The reminder is in English only. Students who are already enrolled receive enrollment priority for the upcoming school year, as long as they complete their reenrollment packet during the reenrollment window. The reenrollment form is in English only.

Student population data from the ADE shows that some LTS schools have significantly lower percentages of EL students than nearby traditional schools in other LEAs. For example, during SY 2022-23:

- Avondale's student population was 7.0% EL students. In contrast, the student population at Collier Elementary School (in Littleton Elementary School District), 1.3 miles away, was 12.1% EL students; and the student population at Eliseo C. Félix School (in Avondale Elementary School District), 1.7 miles away, was 20.6% EL students.
- N. Chandler's student population was 5.7% EL students. In contrast, the student population at three Chandler Unified School District schools – Shumway Leadership Academy (0.7 miles away), Sanborn Elementary School (1.7 miles away), and Galveston Elementary School (1.8 miles away) – were 11.8%, 9.7%, and 25.1% EL students, respectively.
- The student population of Phoenix and N. Phoenix, which are combined for state reporting purposes, was 8.8% EL students. In contrast, the student population at Copper King Elementary School (in Pendergast Elementary School District), 1.3 miles away, was 15.2% EL students.

Vertex does some marketing for LTS schools, especially for campuses struggling with enrollment. The marketing has included billboards, flyers, direct mailings, search engine advertising, social media advertising, and radio, television, and print advertisements. According to Vertex's Senior Director of Brand and Marketing, all the marketing provided by Vertex has been in English only, except one direct mailing done for Laveen in English and Spanish, and one advertisement in a Spanish language magazine for Laveen in 2021.

## **2. Translation and Interpretation for Parents of Current Students**

OCR asked employees at the Selected Schools about what key documents are available in languages other than English. Specifically, OCR asked about student-parent handbooks, report

cards and progress reports, parent newsletters, permission slips for fieldtrips, information about academic assignments, flyers about campus events and programs, and information about the parent-teacher organization (PTO). Employees at Avondale, Chandler, and N. Phoenix told OCR that all such documents are in English only. Most employees at E. Tucson, Goodyear, Maricopa, and N.W. Tucson said that such documents are in English only.

Some employees told OCR that certain electronic information systems can translate documents. For example, at least one employee at N. Chandler and N.W. Tucson mentioned that report cards and progress reports can be translated by the student information system (SIS). Employees at Goodyear and Laveen asserted that parents can translate newsletters on the platform their school used (Smore). Employees at N.W. Tucson indicated that some standardized test reports (e.g., MAP benchmark tests and Star Early Literacy assessments) can be translated into Spanish.

OCR identified other school forms in EL students' files but did not find evidence that the forms were available in languages other than English. The forms included but were not limited to: "Report of Academic Difficulty," "Administering Medication to Students at School," "Student Suspension Notification," "ISS-Student Suspension Notification," "Grade Change Request Form," "45-Day Screening Form," "Notification of Retention," "Student Information Update," and "Adult Contact Information Update."

OCR asked employees about interpretation for parents at school events, parent-teacher conferences, IEP team meetings, and disciplinary hearings. Employees who had knowledge of their school's practices typically said that if a Spanish-speaking interpreter is needed, a staff member (e.g., a secretary, health assistant, aide, registrar, Spanish teacher, or school psychologist) interpreted. Goodyear employees and Maricopa employees told OCR that their school has used a phone interpretation service for IEP team meetings. Laveen's [redacted content] shared that students have interpreted for parents in student discipline matters and parent-teacher conferences. Two N. Chandler employees said that students interpret at parent-teacher conferences.

OCR asked employees what, if anything, their school should do to better serve LEP parents. Responses included: five employees said their school should develop a system to identify parents' language needs; two employees said their school should notify parents of available translation and interpretation; 27 employees said their school should provide more information, materials, forms, or other resources to parents in multiple languages; and three employees said their school should use certified interpreters.

## **I. Concern about Opt-out Decisions at Two LTS Schools**

OCR has a compliance concern that some parents' decisions to opt out their child were not knowing or voluntary waivers of their child's right to EL services. As explained below, the evidence OCR obtained revealed LTS schools' failure to give parents with LEP adequate information about such services and their right to refuse them in a language they understand.

Parents could opt their child out of EL services from LTS schools, which used a "Parent Request for Student Withdrawal from an English Learner Program" form (Opt-Out Form) that is

produced by the ADE. Parents who signed the form signified that they requested their student be removed from the EL program, that they had discussed any alternative educational options with their student's teacher and/or principal, and that they understood their student's progress in English language acquisition would continue to be assessed with the AZELLA until the student scored proficient. Generally, employees at Selected Schools confirmed this process to OCR.

According to the Master Spreadsheet, LTS schools had 95 opted-out EL students who were still being monitored. Notably, 18.9% of the opted-out students were students with disabilities. This high percentage raises a concern that some LTS employees may have asked or encouraged parents to waive their child's EL services due to the challenge of scheduling both EL services and special education services required by an IEP or Section 504 Plan. OCR also found that Chandler and Goodyear had an unusually high number of opted-out students, with 56 EL students at the two schools opting out within three and a half months between June 15, 2022 and September 29, 2022. One Goodyear teacher told OCR that, during summer of 2022, school staff contacted parents to ask whether they wanted to opt their child into receiving pull-out targeted ELD instruction and missing regular instructional time. This evidence coupled with the alarming opt-out rate at Goodyear during that summer raises a concern that school staff effectively steered families into opting out or that parents did not understand the right to EL services that they were waiving. According to the Master Spreadsheet for SY 2022-23, Goodyear had 59 EL students, 41 of whom (69.5%) had been opted out, and Chandler had 77 EL students, 19 of whom (24.7%) had been opted out. Although these two schools represent only 9% of LTS' 22 schools, both accounted for 63.2% of all opted-out LTS students.

OCR discussed the high opt-out rates with other employees at Goodyear and Chandler. These employees told OCR that they were not aware of any school employees suggesting to parents that they should opt out their child. Instead, the employees thought that part of the opt-out issue could be the two schools' communication with parents with LEP. The APs at Chandler and Goodyear told OCR that they speak English only, use staff who are not trained in interpretation to interpret for parents, have not been trained on communicating with parents with LEP, and send home the Notice Form in English only. At Goodyear, the [redacted content] told OCR that parents often have a lot of questions about what EL services will look like, including what their child will miss in class while receiving EL services. Another Goodyear teacher told OCR that parents can opt into pull-out services, and a lot of parents opt their child out because they do not want their child to miss in-class instruction. Two Goodyear teachers interviewed by OCR did not know what, if anything, the school did for opted-out EL students. The [redacted content] at Chandler said she met with parents who had questions about EL services, presented them with more information (e.g., what their child's schedule would look like with EL services), and then the parents would decide if they wanted their child to participate. The [redacted content] explained that a lot of parents, especially parents of students with an IEP, did not want their child pulled out for EL services.

In LTS schools, parents who have questions about opting out their child or who wish to opt-out their child met with the AP. Only one AP at the Selected Schools is bilingual (English and Spanish). The other APs either speak to parents in English or use school employees, who do not have formal training in interpretation, to interpret. Given LTS schools' failures to communicate essential information to parents with LEP with qualified interpreters and translated Notice Forms

about their right to enroll their children in EL services and their right to opt them out, OCR identified a compliance concern across LTS schools about whether LEP parents' decisions to opt their child out of EL services have been knowing and voluntary. In particular, OCR has a concern that the way school staff at Goodyear and Chandler describe LTS' chosen EL program to parents with LEP may emphasize the negative aspect of "missing instruction" and not adequately explain the nature and benefits of the two-hour SEI model. OCR has a related concern that parents may have learned that these schools are using unqualified aides or teachers to pull EL students out of class without having an EL curriculum or materials to teach them effectively.

OCR did not find any evidence that LTS schools were determining whether opted-out EL students were struggling in one or more subjects of the standard instructional program due to language barriers. Most employees at the Selected Schools who OCR asked about monitoring of opted-out students said that they were unaware of how their school monitored such students. Some employees said they monitored opted-out students just like every other student – with progress reports, assessments, etc. One AP told OCR that her school did not monitor opted-out EL students at all. The AP at another school said he did not know what, if anything (including monitoring), the school did for opted-out EL students. Three APs told OCR that the only monitoring of opted-out students was the spring AZELLA reassessment. Records show that the Selected Schools generally continued to administer the AZELLA to opted-out students until they scored proficient, as required.

## **VI. Conclusion**

To resolve the nine violations and two compliance concerns OCR identified in this compliance review, LTS entered into the attached Agreement, which requires the schools to:

- timely identify EL students and place them in an appropriate language instruction program;
- notify EL students' parents, in a timely manner, of their child's identification as an EL and placement in a language instruction program;
- provide all EL students with a daily period of Targeted ELD based on their ELP level;
- ensure that teachers of Targeted and Integrated ELD are sufficiently trained to serve EL students;
- ensure that teachers of Targeted and Integrated ELD document EL services in lesson plans;
- designate one employee at each school or network-wide employees to coordinate language assistance services for EL students, and ensure that the employees have adequate training and time to fulfill the role;
- ensure that ELD instructional materials are appropriate and comparable in quality, availability, quantity, and age or grade level to those provided for non-EL students;
- assess opted-out EL students' ELP at least annually, notify their parents of their child's ELP results and academic progress, and for opted-out EL students who are not demonstrating appropriate growth in ELP or who are struggling in one or more subjects due to language barriers, notify their parents of the lack of progress and offer their

parents an opportunity to enroll their child in the EL program, or at least certain ELD services;

- annually, calculate each school's rate of EL students being opted out and for LTS schools with a high rate of EL students being opted out, evaluate the cause(s) of the high opt-out rate, and then address the cause(s);
- monitor the progress of all current EL students in achieving proficiency in English across the four domains and in acquiring content knowledge by completing monitoring forms;
- provide individual and/or small group ELD and/or SEI interventions for EL students who are struggling with acquiring content knowledge and track, for each EL, the types and amounts of interventions provided;
- monitor the academic progress of each former EL student using a form that includes, at a minimum, fields for narratives from the student's teachers and fields for the student's exit or reclassification date, class grades, and assessment data;
- when monitoring of a former EL indicates that a persistent language barrier may be the cause of academic difficulty, determine if there is a persistent language barrier (and if so, take appropriate measures);
- at least quarterly, review lesson plans and conduct observations to ensure that all EL students are receiving the required targeted and integrated ELD services (and, if any EL students are not receiving the required ELD services, develop a corrective action plan to provide the EL students with compensatory ELD services and ensure adequate services in the future);
- evaluate each LTS school's EL program for success and modify it where not successful;
- identify parents with LEP and their needs, and notify employees of which parents are parents with LEP and need interpreter or translation services;
- ensure a variety of materials, forms, and communications, including application and enrollment information, are readily available in English and Spanish (and include language about how to obtain a free translation or interpretation in other languages); and
- when necessary to ensure meaningful communication, provide free translation or interpretation, using qualified translators and interpreters, for parents with LEP.

LTS and its schools will report to OCR to demonstrate implementation of the Agreement's requirements, and OCR will monitor this implementation to ensure LTS schools' compliance.

Based on the commitments made in the Agreement, OCR is closing the investigation phase of this compliance review. When fully implemented, the Agreement is intended to address the areas of violation and compliance concerns identified by OCR. OCR will monitor LTS schools' implementation of the Agreement until the schools are in compliance with the terms of the Agreement and the Title VI statute and regulation at issue in this compliance review.

This concludes OCR's compliance review and should not be interpreted to address the LTS schools' compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in a compliance review. This letter is not a formal statement of OCR policy, and it 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.

LTS schools may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because they have participated in a compliance review or a complaint resolution process. If this happens, the individual may file a complaint with OCR alleging retaliation.

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

OCR thanks you for Vertex's and LTS schools' cooperation during this compliance review. We also appreciate the courtesy and cooperation that your staff extended to OCR during the review. OCR looks forward to working with you and your staff during the monitoring phase. If you have any questions, please contact OCR's lead attorney for this compliance review, Jason Langberg, at [redacted content], or [redacted content].

Sincerely,

/s/

J. Aaron Romine  
Regional Director

Attachment: Resolution Agreement (signed)

cc (via email): Amanda Buda, Vice President, Exceptional Student Services