

September 15, 2006

Wendella Fox, Esq.  
U.S. Department of Education  
Office for Civil Rights  
Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107

Re: *Complaint regarding English language learners  
in Philadelphia “disciplinary” schools*

Dear Ms. Fox:

This complaint concerns the failure of the School District of Philadelphia to ensure that children assigned to certain “disciplinary” schools have access to services that they need as a result of their status as English language learners. We also address the District’s failure to establish a system for communicating with non-English-speaking parents whose children attend these schools. We base this complaint on Title VI of the Civil Rights Act of 1964, 20 U.S.C. § 2000d, and implementing regulations, 34 C.F.R. Part 100, and on the following facts.

1. Several years ago, the District contracted with Community Education Partners (CEP), a private company, to provide educational services to disruptive and low-performing students. CEP currently operates several schools in Philadelphia, serving over one thousand students.
2. Even before entering into its contract with CEP, the District knew that the students who would be assigned to CEP would include English language learners.

3. However, the District did not, in its contract with CEP, assign to CEP responsibility for ensuring that that English language learners at CEP would receive necessary language services.
4. Moreover, although the District knew that the students assigned to CEP would include English language learners, the District also failed to make its own arrangements to supply the program models, staff, materials, and leadership necessary to ensure that English language learners at CEP would receive necessary services.
5. Nevertheless, the District proceeded to assign English language learners to CEP, and has done so in every year that the program has been in operation.
6. There has never been in place at CEP a program that meets the language needs of the English language learners assigned there.
7. Over the past several years, undersigned counsel has repeatedly communicated with the District's Office of General Counsel about this problem, in telephone conversations, at meetings, and in writing.
8. In September, 2005, undersigned counsel contacted the District concerning C. F., a native speaker of Spanish, who had been transferred to CEP's Hunting Park school the previous spring.
9. C. spoke little English, and had been receiving ESL services at his prior school. However, no ESL services were available for him at CEP, nor were his content area classes adapted so as to enable him to comprehend them. Accordingly, C. could not understand the instruction he was receiving, and was also not learning English.
10. The District's Office of General Counsel acknowledged the problem, and District staff agreed to transfer C. to another school at which ESL services and appropriate content area classes would be available.
11. Even then, however, the District did not stop assigning English language learners to CEP, nor did the District take steps to ensure that a program would be established at CEP to meet the language needs of English language learners.
12. Undersigned counsel again brought the problem to the District's attention on several occasions during school year 2005-06, and several meetings were held on the subject. At these meetings, District staff repeatedly gave assurances that the problem would be corrected.

13. In the latter part of school year 2005-06, the District did make some arrangements for ESL instruction at CEP. However, these arrangements resulted in only sporadic services, and were insufficient to meet the needs of students at the facility, even as determined by the District.
14. In summary, for most of the 2005-06 school year, and indeed for every year of CEP's operation to date, the District failed to make arrangements sufficient to ensure that English language learners at CEP would receive the language services that they needed.
15. The District also failed, throughout this period, to ensure that communications between CEP and non-English-speaking parents are in the native language, especially if the parent speaks a language other than Spanish.
16. In May, 2006, the District assured undersigned counsel, in writing, that beginning in the fall of 2006, students at CEP would have access to an adequate number of properly certified ESL teachers; that content area teachers would have been trained in techniques for adapting their instruction to the needs of English language learners; and that policies and contractual language would be in place to ensure that the needs of ELL students at the facility would be fully met.
17. However, when school opened in September 2006, ELL students at CEP still did not have an ESL program.

In response to inquiries by undersigned counsel, the District has again given assurances that the problem will be resolved soon. We do not doubt that the District is working on the situation, but clearly the job is still not done.

By failing to establish, by contract, policy, or otherwise, a program sufficient to ensure that English language learners assigned to CEP receive the language services they require, the District has violated Title VI and its implementing regulations. *e.g.*, *Lau v. Nichols*, 414 US 563 (1974); *Castaneda v. Pickard*, 648 F.2d 989 (CA5 1981); *Idaho Migrant Council v. Board of Education*, 647 F.2d 69 (CA9 1981); *Gomez v. Illinois Board of Education*, 811 F.2d 1030 (CA7 1987); *Cintron v. Brentwood Union Free School District*, 455 F.Supp. 57 (ED NY 1978); *Heavy Runner v. Bremner*, 522 F.Supp. 162 (D MT 1981); *Flores v. Arizona*, 48 F.Supp.2d 937 (D AZ 1999). The District has also violated these provisions by failing to ensure that non-English-speaking families have equal access to information about programs, services, and their children's progress at CEP.

We request that OCR require the District *either* to ensure, through a process of pre-screening, that no English language learners are assigned to CEP, and that all such

students currently assigned to CEP are transferred to schools in which such services are available; *or* to ensure, via appropriate contractual language, policies, and practices, that the rights of English language learners at all CEP facilities are fully protected. If the District selects this option, we urge OCR to require:

- A clear delineation of responsibility for the provision of language services to English language learners assigned to CEP.
- Policies, procedures, personnel and materials sufficient to ensure that:
  - English language learners assigned to CEP are identified and properly assessed for English proficiency, and that their family's home language is determined.
  - Alternative language services, *e.g.*, an English as a Second Language program, are provided to ELL's at CEP, based on an appropriate instructional model and delivered by a sufficient number of qualified teachers.
  - Teachers of content area classes adapt their instruction to the extent necessary to meet the needs of English language learners in their classes.
  - Non-instructional services and benefits at CEP, *e.g.*, counseling, are as fully accessible to English language learners as to native speakers of English.
  - Communication with parents of limited English proficiency is in the home language.
- The provision of supplementary and compensatory educational services for those ELL students who have not received appropriate instruction while at CEP.

We appreciate OCR's attention to this complaint.

Sincerely,

Len Rieser

cc: Ken Cooper, Esq.  
Office of General Counsel, SDP