



U.S. Department of Justice

Civil Rights Division



U.S. Department of Education

Office for Civil Rights

August 27, 2010

Mr. Tom Horne
Superintendent of Public Instruction
Arizona Department of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

Re: **Arizona Department of Education/State Board of Education**
OCR Case Number 08064006
DOJ Case Number 169-8-81

Dear Superintendent Horne:

As you know, the Office for Civil Rights of the U.S. Department of Education (OCR) received a complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Title VI), and its implementing regulations, regarding the Arizona Department of Education's (AZDE's) policies and procedures under which school districts and charter schools reclassify English Language Learner (ELL) students as Fluent English Proficient (FEP) students and thereby exit them from ELL services. Specifically, the complainant alleges that "many thousands" of ELL students are being reclassified as "proficient" in English when test results indicate that they, in fact, are not proficient. The complainant also alleges that this premature exiting of ELL students resulted from AZDE's use of the Stanford English Language Proficiency (SELP) test, the Arizona English Language Learner Assessment (AZELLA),¹ and their respective scoring procedures, which deem students proficient in English even when they are not proficient in each language domain.

In response to this complaint, OCR and the United States Department of Justice (DOJ) conducted an investigation. DOJ enforces the Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) (EEOA), and both DOJ and OCR are responsible for enforcing Title VI. During the investigation, DOJ and OCR obtained evidence from a number of sources at the state, district, and local levels. The evidence includes documents and data files as well as witness interviews. We also considered the work of a consultant, with expertise in psychometrics and English language proficiency assessments, who analyzed AZELLA's scoring procedures and validity.

Based on the results of our investigation, applicable federal law, and existing OCR policy, OCR has determined that AZDE's use of the SELP and the AZELLA Forms AZ-1 and AZ-2 does not comply with Title VI because it fails to ensure a valid measure of whether ELL students are (a) proficient in each language domain before they are exited from ELL services and (b) able to participate meaningfully in Arizona LEA

¹ The AZELLA Form AZ-1 replaced the SELP in the 2006-07 school year, and the AZELLA Form AZ-2 replaced the AZELLA Form AZ-1 in the 2009-10 school year. References to "the AZELLA" in this letter include both Forms AZ-1 and AZ-2.

educational programs. While the complaint under investigation focused on reclassification, OCR also has determined that AZDE's use of the SELP and the AZELLA to identify ELL students among those identified as PHLOTE (students with a primary or home language other than English) does not comply with Title VI because these assessments are not valid for the purpose of identifying ELL students.

As your Education Unit Chief Counsel correctly noted in an e-mail dated April 12, 2010, this complaint is related to *Horne v. Flores*, the federal court matter filed in the District of Arizona in which plaintiffs assert claims under the EEOA. (Email from J. Pollock, AZDE Education Unit Chief Counsel, to A. Romine, OCR Supervisory Team Leader, on April 12, 2010.) DOJ has similarly determined that AZDE's use of the SELP and the AZELLA both to identify and reclassify ELLs does not comply with Title VI or the EEOA. Together, OCR and the DOJ hope to resolve these compliance issues through a Resolution Agreement, a proposed version of which is attached for discussion purposes.

I. Background

Under Title VI and its implementing regulations, recipients of federal financial assistance are prohibited from discriminating on the basis of race, color, or national origin. It is national origin status, and the limited English proficiency that may attend such status specifically, which invokes Title VI jurisdiction regarding the allegation under investigation. AZDE is a recipient of financial assistance from the U.S. Department of Education and is, therefore, subject to Title VI and its implementing regulations. LEAs in Arizona that receive federal financial assistance are equally required to comply with Title VI. Furthermore, the EEOA requires that state educational agencies and LEAs take appropriate action to overcome language barriers that impede equal participation by students in the instructional program.

The complaint received under Title VI alleges that the SELP's and the AZELLA's scoring procedures allow ELL students to be reclassified as "proficient" in English when test results indicate that they are not proficient in one or more of the language area subtests. The complaint further alleges that the use of the SELP and the AZELLA result in the erroneous reclassification of thousands of ELL students in Arizona. Since School Year (SY) 2006-07, Arizona law has delegated authority to the AZDE State Superintendent of Education to determine how to reclassify ELL students. According to AZDE procedures, ELL students are assessed for English proficiency progress at least annually; if they test "proficient" on the composite score, they must be reclassified as Fluent English Proficient (FEP) and must be exited from the English language development program. AZDE has mandated that the SELP and the AZELLA be the sole English language proficiency assessment measure of ELL students for identification and reclassification purposes in Arizona.

The AZELLA purports to measure a student's English proficiency in speaking, listening, reading, and writing. Students are assigned scores in each of these domains, and a higher score in one domain can compensate for a lower score in another domain. Five proficiency levels are defined by the test publisher:

- Pre-Emergent: Student does not understand enough language to perform in English.
- Emergent: Student understands and can speak a few isolated English words.
- Basic: Student may understand slower speech, and speak, read, and write simple words and phrases, but often makes mistakes.

- Intermediate: Student can understand familiar topics and is somewhat fluent in English, but has difficulty with academic conversations.
- Proficient: Student can read and understand texts and conversations at a normal speed, and can speak and write fluently with minor errors.

According to AZDE, its reassessment standards do not require students to demonstrate proficient scores in each of the subtests in order to qualify for reclassification into the mainstream. ELL students simply must attain a composite score that meets or exceeds the score selected to represent "proficiency." In its April 3, 2006 data response, AZDE states that a student can be designated as "proficient" based on the composite score while at the same time achieving a sub-test score of less than "proficient." AZDE further explained that "[t]here is the potential for a student to score an 'Intermediate' or even a high 'Basic' on a subtest and still receive proficient due to high scores in all other subtests."

II. Investigation of the AZELLA Complaints

As part of our investigation, we reviewed all of the information submitted by AZDE in six data responses. We looked at Arizona LEAs' implementation of AZDE's mandated reclassification criteria. We also reviewed data provided by AZDE, including SELP and AZELLA data from SY 2004-05 through SY 2009-10 and Arizona's Instrument to Measure Standards (AIMS)² data from SY 2006-07 through SY 2009-10. In addition, we reviewed data from a sampling of 10 large and small LEAs and tracked how reclassified students performed academically over the 2006-2010 period, as well as LEAs' evaluations of their ELL programs. We also assessed the validity of the AZELLA itself with the assistance of a consultant with expertise in psychometrics and English language proficiency assessments.

The data we reviewed identified tens of thousands of students who were identified as proficient based on their composite scores, but who did not score proficient on at least one of the subtest areas (oral, reading, and writing). Those identified included both PHLOTE students deemed initially fluent English Proficient (IFEP) and ELL students deemed fluent English Proficient (FEP) for reclassification purposes. Our consultant psychometrician's analyses confirmed these results. The consultant concluded that the AZELLA fails to identify all ELL students, prematurely exits ELL students, and is not a valid measure of English language proficiency and readiness to exit the ELL program. These conclusions are based, in part, on analyses showing that substantial percentages of students who receive proficient composite scores are not proficient in one or more of the four domains, including the important domains of reading and writing. These conclusions are further based on analyses of AZELLA's dimensionality, distributional characteristics, cut-scores, standard-setting, content validity, and criterion-related validity.

Moreover, the data does not support AZDE's contention that students who have been reclassified as FEP and exited from the ELL program with SELP and AZELLA are progressing adequately. In its April 28, 2010 data response to OCR, AZDE provided a chart, *Statewide Student Performance on AIMS by Former ELL Students by Subject Area*, intended to demonstrate how reclassified students are faring on AIMS

² AIMS is the State-required standards-based academic performance assessment that Arizona students in grades 3-8 and 10 are required to take. The AIMS test is designed to measure student proficiency in Arizona's academic content standards in reading, writing, math and science. AZDE describes passing scores as "Meets the standards" and "Exceeds the standard," and failing scores as "Approaches the standard" and "Falls far below the standard."

compared with students statewide. The chart indicates the percentage of former ELL students (exited from the ELL program for at least two years) compared with "all students" who received passing scores on the AIMS test in 2006-2009 for grades 3-8 and 10. To the extent this chart reflects greater percentages of students who are "FEP for 2 or More Years" passing the AIMS in most grades and subjects than "all students," we have two serious concerns with AZDE's analysis of the data.

First, AZDE's two comparator groups do not reflect whether former ELL students who have been exited from the ELL program for less than two years are able to perform comparably to their English-Only peers on AIMS. Instead, AZDE compared only former ELLs who were exited for two or more years with "all students," which includes ELL students. In other words, AZDE inflated the performance of former ELLs by excluding those who have been exited from the ELL program for less than two years, and deflated the performance of "all students" by including ELL students who have yet to achieve proficiency.³

Second, analyses by our consultant psychometrician appropriately compared the 2006-09 performance on AIMS of all FEP students with that of English-Only students as well as the performance of FEP1 students with that of English-Only students to see if the former were ready to be exited from ELL services and in mainstream classes with their English-Only peers. The psychometrician's analyses reveal that FEP students, on average across all grades, performed lower in AIMS when compared with English-Only students. The gap in performance was particularly marked for the FEP1 students and all FEP students at the higher grades. This lower performance of FEP students at the higher grades is an additional indication of premature exit from ELL services.

Similarly, the data provided to OCR by several large LEAs across Arizona about how their reclassified students are performing academically confirms that these students are failing to meet state academic proficiency standards when one compares how they perform on AIMS in their first two years after exit without ELL services. Our review of LEA program evaluation data and monitoring reports with supporting student data information further confirms that reclassified students are not participating meaningfully in the mainstream classroom.⁴

³ We note that the 2006 and 2007 data presented by AZDE does not reflect on the AZELLA, but rather the SELP, because FEP students who were exited two or more years before in both years took the SELP, not the AZELLA.

⁴ We also considered AZDE's compensatory education program, which seeks to provide support for reclassified students who continue to need additional English language development (ELD) services. Many LEAs, however, indicated that students are not required to participate in the compensatory ELD services, that the services must occur outside the regular school day, and that they are not fully funded by AZDE. Indeed, it is a provision of State statute that compensatory instruction (provided only with parent consent) must be provided outside of the regular school day to FEP students who need additional assistance in the area of English language proficiency. ARS 15-756.11; *see also* AZDE's "School Year 2009-2010 English Language Learner Monitoring Process for Federal and State Compliance" at 14. The instruction is to focus on only English language development – listening, speaking, reading, writing, grammar and vocabulary. *Id.* During fiscal year 2010, the Arizona legislature reduced the funding of the Compensatory Instruction Fund during the school year. Currently, the approved fiscal year 2011 budget for AZDE Non-Formula programs (which includes the Compensatory Instruction Fund) has no funds available for compensatory instruction.

III. Bases for the Proposed Resolution Agreement

We considered the weight of the evidence summarized above in light of federal law and existing OCR policy. After careful deliberation, we have determined that AZDE is not in compliance with Title VI and the EEOA because due to AZDE's mandated reclassification procedures, ELL students are being exited from the ELL program prematurely without yet obtaining proficiency in each of the four domains and an ability to participate meaningfully in the educational program. As stated above, although the allegation under investigation focused on reclassification, the concerns reflected here also relate to the initial identification of ELL students because AZDE uses the AZELLA to initially identify ELL students, and its scoring procedures and lack of validity likewise affect the identification process. The Title VI and EEOA systemic compliance concerns we found are not specific to particular LEAs, but rather are statewide patterns of noncompliance that are a direct result of the method of administration established by AZDE. Several LEAs across the State, including those with different language populations, both large and small, and both urban and rural, have expressed the same compliance concerns.

The enclosed Resolution Agreement is designed to address OCR's and DOJ's determination that AZDE's use of the SELP and the AZELLA does not comply with Title VI or the EEOA. This Agreement also would address the compliance concerns regarding the SELP and the AZELLA expressed by several LEAs across the State. The Agreement requires AZDE to adopt valid, reliable, and objective criteria for identifying and reclassifying ELL students, whereby students demonstrate proficiency in each language domain—oral, comprehension, reading, and writing—as well as interim measures to be used until valid and reliable criteria can be established. We are providing you with this copy for negotiation purposes only; please do not distribute it to anyone not involved in the negotiations. Once AZDE has complied fully with the terms of the Agreement, it will have come into compliance with Title VI and the EEOA with respect to this issue.⁵

This letter serves as your notice under OCR's Case Processing Manual section 303(b) that if you do not indicate your willingness to voluntarily resolve the identified areas of non-compliance within thirty (30) calendar days or if negotiations reach an impasse at any time, OCR will issue a letter of findings. This letter also serves as your notice under the EEOA that AZDE's current processes for identifying and reclassifying ELLs do not comply with the EEOA. See 20 U.S.C. § 1710.

As set forth in the proposed Resolution Agreement, our goal is for AZDE to institute an improved interim identification and reclassification process as close to the start of the 2010-11 school year as possible and a valid, reliable and objective identification and reclassification process by the second semester of the 2011-12 school year. Because the school year has started and to ensure that ELL students who need services do not go without them for another school year, we ask that you or someone else with negotiating authority contact us by **August 30, 2010**, so that we may resolve this matter promptly. Alternately, if you wish to accept the agreement as proposed, please execute and return two originals. We will execute these and return one original to you. We can be reached by contacting Mary Lou Mobley at 303-844-4480 or Mary.Lou.Mobley@ed.gov, and Amy Berman at 202-514-3843 or

⁵ This Agreement does not purport to remedy any other existing or potential violations of Title VI, its implementing regulations, the EEOA, or any other federal law. We have found Title VI and EEOA compliance concerns with AZDE's use of a one-question home language survey and supplemental teacher referral process. We are investigating AZDE's mandated alternative language program model, which requires ELL students to take a minimum of four hours of Structured English Immersion a day.

Amy.Berman@usdoj.gov. If you do not wish to resolve this matter through a voluntary resolution agreement, please let us know immediately.

Sincerely,



Mary Lou Mobley
Director, Region VIII (Denver)
Office for Civil Rights, U.S. Department of Education



Amy I. Berman
Acting Section Chief, Educational Opportunities Section
Civil Rights Division, U.S. Department of Justice

Enclosure: Draft Resolution Agreement (*for negotiation/discussion only*)

Cc: Cheryl J. Lebo
Associate Superintendent
Standards and Assessment
Arizona Department of Education

Jennifer Pollock
Education Unit Chief Counsel
Arizona Attorney General's Office

Susan P. Segal
Arizona Attorney General's Office

RESOLUTION AGREEMENT

Among the Arizona State Board of Education and the Arizona Department of Education,
The U.S. Department of Education's Office for Civil Rights (Denver), and
The U.S. Department of Justice's Civil Rights Division

OCR Case Number 08-06-4006

DOJ Case Number 169-8-81

BACKGROUND

1. The U.S. Department of Education, Office for Civil Rights (OCR) and the U.S. Department of Justice (DOJ) investigated a complaint filed against the Arizona State Board of Education and the Arizona Department of Education (hereinafter jointly referred to as AZDE) regarding AZDE's policies and procedures by which English Language Learner (ELL) students are reclassified as Fluent English Proficient (FEP) and, thereby, exited from the English language acquisition services program. The complainant alleges that thousands of ELL students are being reclassified as "proficient" in English when test results indicate that they are not in fact proficient in English. The complainant alleges that this is due to AZDE's use of the Stanford English Language Proficiency (SELP) test and, later, the Arizona English Language Learner Assessment (AZELLA) (along with their respective scoring procedures), as the sole reclassification criterion for ELL students statewide.
2. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and its implementing regulation at 34 C.F.R. pt. 100, taken together, provide, in relevant part, that no program or activity receiving Federal financial assistance from the United States may discriminate on the basis of national origin. AZDE's Title VI obligations are enforced by OCR and DOJ.
3. The Equal Educational Opportunities Act (EEOA), 20 U.S.C. § 1703(f), requires that state and local educational agencies take appropriate action to overcome language barriers that impede equal participation by students in the instructional program. The EEOA is enforced by DOJ.
4. OCR and DOJ found that AZDE is not in compliance with Title VI and the EEOA regarding the issues investigated in this matter. Specifically, OCR and DOJ found that due to AZDE's mandated use of the composite scores on the SELP in the 2004-05 and 2005-06 school years, the AZELLA Form AZ-1 in the 2006-07, 2007-08, and 2008-09 school years, and the AZELLA Form AZ-2 in the 2009-10 school year for identification and reclassification purposes, ELL students (a) were not and are not being identified; (b) were and are being exited from the ELL program prematurely without yet obtaining proficiency in each of the four language skill areas (oral, comprehension, reading, and writing); and (c) were reclassified but are unable to participate meaningfully in the regular education environment and need further English language supports. In addition, we found that the AZELLA is not a valid measure of English language proficiency and readiness to exit ELL services. AZDE has voluntarily agreed to take the steps outlined in this Resolution Agreement to resolve this noncompliance under Title VI and the EEOA.
5. The purpose of this Resolution Agreement is in the short term to institute an interim identification and reclassification process during the 2010-11 school year and the first semester of the 2011-12 school year, and in the long term to implement a new, valid, reliable, and objective identification and reclassification process by the second semester of the 2011-12 school year that will include the

use of a substantially revised AZELLA that addresses the requirements of paragraphs 10, 16, and 17 or a different English language proficiency assessment that is valid and reliable for the purposes of identifying and exiting/reclassifying ELL students.

JURISDICTION

6. AZDE is subject to Title VI because it receives Federal financial assistance from the Department of Education.
7. AZDE is subject to the EEOA because AZDE is a state educational agency as defined by 20 U.S.C. § 1720.
8. The parties to this Agreement are OCR, DOJ, and AZDE. In light of this Agreement, the parties have determined that OCR Case Number 08-06-4006 and DOJ's investigation of this complaint can be resolved through the terms of this Agreement.
9. In order to resolve the complaint, the parties enter into this Agreement. In consideration of, and consistent with, the terms of this Agreement, OCR agrees to refrain from initiating an enforcement action and DOJ agrees to refrain from initiating litigation regarding areas covered in the "Remedial Action" section of this Agreement, except as provided below.

REMEDIAL ACTION

10. OCR and DOJ have determined that the SELP and the AZELLA, in both forms AZ-1 and AZ-2, are not valid assessments to identify students in need of English language acquisition services. Thus, the AZELLA may not be used in its current form as the sole identification criterion for ELL students in the short term interim plan, and in the long term plan required by second semester of the 2011-12 school year, the AZELLA may not be used in its current form to initially identify ELL students. OCR and DOJ have also determined that use of the AZELLA, overall, is not a valid measure of the student's proficiency in English so as to ensure that reclassified students can meaningfully participate in the educational program without ELL services. Therefore, the AZELLA may not be used in its current form as the sole reclassification criterion for ELL students in the short term interim plan and may not be used in its current form as a reclassification criterion in the long term plan required herein. This agreement requires a two-step process to implement a new, valid, reliable, and objective method to both identify and reclassify ELL students. In the short term, AZDE will implement an interim process for school year 2010-11 and the first semester of school year 2011-12, as set forth in paragraphs 11-15 below. In the long term, AZDE must implement a new, valid, reliable, and objective process to identify and reclassify ELL students by January 15, 2012; this process will include use of either a substantially revised AZELLA, with sufficient evidence of external and internal validity, as required by paragraph 17 below, or a different, valid, and reliable English language proficiency assessment.

INTERIM PLAN

11. Identification: As an interim measure during school year 2010-11 and the first semester of school year 2011-12, but not past January 15, 2012 (when AZDE will have adopted an assessment that meets the requirements of paragraphs 10, 16, and 17), AZDE may require LEAs to use the AZELLA

under the terms set forth in this paragraph or an alternative assessment approved by DOJ and OCR to identify ELL students. **By September 30, 2010**, AZDE will submit to OCR and DOJ for their approval interim policies and procedures concerning the identification of ELL students for use during the 2010-11 school year and the first semester of school year 2011-12. AZDE's interim policies and procedures may include the use of the AZELLA, but at a minimum, will require that students with a primary or home language other than English (PHLOTE) are assessed with the AZELLA or an alternative assessment approved by DOJ and OCR; if students are not proficient in each domain of oral, comprehension, reading, and writing, as appropriate to grade level, they will be considered ELL students. These interim policies and procedures shall be retroactively effective for all PHLOTE students assessed during registration for, and the first weeks of, the 2010-11 school year. Further, if the AZELLA is used to identify an ELL student and the student scores proficient overall and in each domain, the LEA, including personnel familiar with the student and trained in second language acquisition (*i.e.*, an ESL or bilingual certified teacher), in consultation with the student's parent(s), must agree with the proficiency determination based on a sufficient body of evidence to include standardized testing information (*i.e.*, proficiency in AIMS reading, writing, and math where grade level appropriate), grades, and parent and teacher recommendations, and determine the English language development services appropriate for each student.

12. **Reclassification:** **By September 30, 2010**, AZDE will submit to OCR and DOJ for their approval interim policies and procedures concerning the reclassification of ELL students for use during the 2010-11 school year and the first semester of school year 2011-12. AZDE's interim policies and procedures may include the use of the AZELLA or an alternative assessment approved by DOJ and OCR. During the interim period, starting with the 2010-11 school year through January 15, 2012, LEAs will reclassify ELL students only if: (1) the student achieves proficiency in each of the assessment's four domains, as appropriate to his or her grade level; and (2) the LEA, including personnel familiar with the student and trained in second language acquisition (*i.e.*, an ESL or bilingual certified teacher), in consultation with the student's parent(s), agrees with the proficiency determination based on a sufficient body of evidence to include standardized testing information (*i.e.*, proficiency in AIMS reading, writing, and math, where grade appropriate), grades, and parent and teacher recommendations. AZDE may not allow LEAs to administer the AZELLA or the alternative assessment approved by DOJ and OCR to a student more than two times in a school year.
13. **Students previously identified as initially fluent in English (IFEP) and reclassified as FEP between SY 2004-05 and 2008-09:** If, during the 2004-05, 2005-06, 2006-07, 2007-08, or 2008-09 school years, a student was tested with the SELP or the AZELLA, and determined to be IFEP or FEP, the LEA must review the student's sub-test scores to determine if the student was proficient in each of the four domains, as appropriate to his or her grade level. If the student was not proficient in each of the four domains as appropriate to his or her grade level, the LEA, including personnel familiar with the student and trained in second language acquisition (*i.e.*, an ESL or bilingual certified teacher), in consultation with the student's parent(s), will then review standardized testing information, (*i.e.*, proficiency in AIMS reading, writing, and math where grade level appropriate), grades, and parent and teacher recommendations, to determine if the student needs language acquisition services or compensatory services. If the student needs language acquisition services, AZDE will require that the LEA provide the services. If the student needs compensatory services, AZDE will appropriately fund the compensatory services and monitor to ensure that the LEA provides the services.

14. Students identified as IFEP or reclassified as FEP during SY 2009-10: For students who were identified as IFEP or reclassified as FEP during the 2009-10 school year, if the student's most recent AZELLA sub-test scores (those from school year 2009-10) indicate that the student is not proficient in each of the four domains as appropriate to his or her grade level, the student will be classified as an ELL student, and the LEA shall notify the parent of the student's ELL status and eligibility for ELL services. If the parent declines ELL services, the LEA will offer the ELL student compensatory services. For students who were identified as IFEP or reclassified as FEP during the 2009-10 school year, if the student has proficient 2009-10 scores overall and in each of the four domains as appropriate to their grade levels, the LEA will then, in consultation with personnel familiar with the student and trained in second language acquisition (*i.e.*, an ESL or bilingual certified teacher) and with the student's parents, determine if the student needs language acquisition services or compensatory services. If the student needs language acquisition services, AZDE will require that the LEA provides the services. If the student needs compensatory services, AZDE will appropriately fund the compensatory services and monitor to ensure that the LEA provides the services.
15. OCR and DOJ will notify AZDE when they have decided whether to approve or disapprove the interim policies and procedures required by paragraphs 11 through 14. If AZDE's proposal is disapproved by OCR and DOJ, AZDE will re-submit a proposal that fully addresses all concerns communicated to AZDE by OCR and DOJ within fifteen (15) days of OCR and DOJ's notification. If OCR and DOJ object to the proposed criteria, the parties to the agreement will work together in good faith to reach a resolution that ensures compliance with Title VI and the EEOA. If the parties cannot resolve their dispute, OCR and DOJ reserve the right to take enforcement action to obtain compliance with Title VI and the EEOA. AZDE will formally adopt and begin implementing the approved interim policies and procedures within five (5) days of OCR and DOJ's approval. Within five (5) days of OCR and DOJ's approval, AZDE will send a memorandum to each LEA detailing the approved interim policies and procedures, publish these policies and procedures within its OELAS (Office of English Language Acquisition Services) ELL Monitoring Notebook Checklists, and make them available on the AZDE web page link at English Language Acquisition Services. AZDE will require all Arizona LEAs to provide training to all relevant staff and administrators concerning the interim approved policies and procedures for identifying and reclassifying ELL students within twenty (20) days of OCR and DOJ's approval of the interim policies and procedures.

LONG TERM PLAN

16. By **January 15, 2012**, AZDE will adopt new, valid, reliable, and objective criteria, as approved by OCR and DOJ, for LEAs to use to ensure that each ELL student has obtained English language proficiency in each domain of oral, comprehension, reading, and writing English before: (a) being identified as IFEP; (b) being reclassified as FEP; or (c) being required to exit language acquisition services. AZDE will require that LEAs administer a valid and reliable English language proficiency assessment according to the publisher's instructions as a required criterion for identifying ELL students, determining their English language proficiency, and exiting ELL students from English language acquisition services. For students who test proficient on this assessment, AZDE may use additional criteria, such as standardized test information, grades, and teacher recommendations, for the purpose of continuing to provide English language acquisition services to these students.

17. By **October 1, 2011**, AZDE will demonstrate that the English language proficiency assessment chosen to comply with paragraphs 10 and 16 above yields valid and reliable information on a student's English proficiency in each of the following domains: oral, comprehension, reading, and writing. AZDE may use a composite "proficiency" score as long as AZDE can demonstrate that such a score (i) requires sufficient proficiency in each of the language domains (oral, comprehension, reading and writing, as appropriate to grade level) to permit students to effectively participate in grade-level content instruction in English and (ii) overall is a valid and reliable measure of the student's proficiency in English that enables his/her meaningful participation in the educational program without ELL services, consistent with the purpose for which the assessment is used.
 - a. If AZDE chooses to revise the AZELLA to implement paragraphs 10, 16, and 17, AZDE must provide a revised AZELLA with sufficient evidence of internal and external validity for both initial identification and exiting purposes **by October 1, 2011**. Toward that end, AZDE must submit a proposal to OCR and DOJ for review and approval by **December 1, 2010**, as to how AZDE will demonstrate that the revised AZELLA:
 - i. Has sufficient evidence of validated cut scores based on at least two different standard setting approaches and valid external criteria;
 - ii. Has sufficient evidence of content validity;
 - iii. Has sufficient evidence of criterion-related validity in terms of concurrent validity and predictive validity; and
 - iv. Has sufficient evidence of reliability, including whole test reliability based on a parallel forms approach using AZ-1 and AZ-2 as two parallel forms in addition to another approach (*e.g.*, the internal consistency approach), and interrater reliability information using at least the Kappa coefficient and intra-class correlation for open-ended questions.
 - b. OCR and DOJ will jointly notify AZDE when they have decided to approve or disapprove the proposal required by paragraph 17(a). If AZDE's proposal is disapproved by OCR and DOJ, within 15 days of OCR and DOJ's notification to AZDE of concerns, AZDE will timely resubmit a proposal that fully addresses all concerns communicated to AZDE by OCR and DOJ. If OCR and DOJ object to the revised proposal, the parties to the agreement will work together in good faith to reach a resolution that ensures compliance with Title VI and the EEOA. If the parties cannot resolve their dispute, OCR and DOJ reserve the right to take enforcement action to obtain compliance with Title VI and the EEOA.
18. By **October 1, 2011**, AZDE will provide the draft policies and procedures for the long term plan, along with evidence of the new English language proficiency assessment's validity and reliability, as required by paragraphs 10, 16, and 17 to OCR and DOJ for review and approval. OCR and DOJ will jointly notify AZDE when they have decided to approve or disapprove the policies and procedures required by paragraphs 10 and 16. If AZDE's proposal is disapproved by OCR and DOJ, within 15 days of OCR and DOJ's notification to AZDE of concerns AZDE will timely resubmit a proposal that

fully addresses all concerns communicated to AZDE by OCR and DOJ. If OCR and DOJ object to the proposed criteria, the parties to the agreement will work together in good faith to reach a resolution that ensures compliance with Title VI and the EEOA. If the parties cannot resolve their dispute, OCR and DOJ reserve the right to take enforcement action to obtain compliance with Title VI and the EEOA. AZDE will formally adopt and begin implementing the approved long-term policies and procedures within ten (10) days of OCR and DOJ's approval. AZDE will publish these policies and procedures within its OELAS (Office of English Language Acquisition Services) ELL Monitoring Notebook Checklists and make them available on the AZDE web page link at English Language Acquisition Services, within twenty (20) days of OCR and DOJ's approval.

TRAINING and OTHER INTERIM REPORTING

19. By **January 15, 2011**, AZDE will provide OCR and DOJ with supporting documentation that all LEAs have met their obligations related to the AZDE interim policies and procedures, notification, training and monitoring provisions approved by OCR and DOJ. Documentation will include copies of AZDE monitoring reports completed between September 1, 2010 and December 30, 2010.
20. **Within 45 days** of OCR and DOJ's approval of the interim policies and procedures, and by no later than December 15, 2010, AZDE will require that each LEA submit to AZDE a report detailing the following for each school year: the number of PHLOTE students initially identified as IFEPs in the 2004-05 through 2009-10 school years who did not score proficient in each of the four domains of the SELP and the AZELLA, as appropriate to grade level; the number of ELL students reclassified as FEP in the 2004-05 through 2009-10 school years who did not score proficient in all four domains of the SELP and the AZELLA as appropriate to grade level; the status of the review of additional data for each student falling in each of the previous categories; the number of students enrolled or re-enrolled in English language acquisition services pursuant to the terms of this agreement; and the number of students receiving compensatory services pursuant to the terms of this agreement. This documentation should also include an explanation of the compensatory services offered by each district and/or school. AZDE will provide OCR and DOJ with a copy of each LEA report **by January 15, 2011**.
21. **Within 45 days** of OCR and DOJ's approval of the long term policies and procedures, AZDE will provide training to all relevant staff and administrators at AZDE and all Arizona LEAs, concerning identifying, reclassifying, and exiting ELL students from English language acquisition services. AZDE will provide OCR and DOJ a copy of the proposed training materials at least ten (10) days before the training so that OCR and DOJ may approve or modify the training materials. The training will be provided by an individual who is knowledgeable about Title VI and EEOA issues pertaining to the reclassification of ELL students. The training will include:
 - a. A review of the LEAs' responsibilities to comply with the EEOA and Title VI and its implementing regulation, 34 C.F.R. Part 100, which state that educational institutions have a responsibility to ensure equal educational opportunities for all students. ELL students must be provided with, and must not be exited from, language acquisition services until they are proficient in English in each of the four domains of the approved English language

assessment and able to participate meaningfully in the regular educational program without such services;

- b. A copy of the revised AZDE policies and procedures regarding identification and reclassification of ELL students, as approved by OCR and DOJ, and LEAs' responsibilities under the approved policies and procedures;
 - c. LEAs will be informed of their responsibilities to monitor former ELL students' academic progress, including their grades, standardized test information, and dropout, graduation, and retention rates as compared to those of their non/never-ELL peers; and
 - d. LEAs will be informed of their responsibilities regarding paragraphs 20-21 of this Agreement.
22. Within ten (10) calendar days after the conclusion of the training, AZDE will submit to OCR and DOJ proof that the training was provided. The documentation will include: the dates of the training; the names and titles of the individuals who provided the training; the training agenda; the names and titles of the administrators and staff by districts and/or schools who attended the training; and a copy of the sign-in sheets.
23. By **July 15, 2012**, AZDE will provide OCR and DOJ with supporting documentation that all LEAs have met their obligations related to the final policies and procedures, notification, training and monitoring provisions approved by OCR and DOJ. Documentation will include copies of AZDE monitoring reports and training information to LEAs on the identification and reclassification of ELL students completed between January 15, 2011 and July 1, 2012.

NOTICE

24. AZDE will require that Arizona LEAs communicate with parents of students about the OCR and DOJ approved interim policies and procedures required by the Interim Plan provisions in paragraphs 11 through 15 above within fifteen (15) days of their adoption. AZDE will notify LEAs that communication with these parents must be in a language they understand and must state that the purpose of the notification is to ensure that their children's educational needs are being met.
25. AZDE will also require that Arizona LEAs communicate with parents of students about the OCR and DOJ approved long term plan policies and procedures within thirty (30) days of their adoption and notify LEAs that communication with these parents must be in a language they understand and must state that the purpose of the communication is to ensure that their children's educational needs are being met.
26. AZDE will monitor the implementation of the corrective action required by paragraphs 24 and 25 through its OELAS monitoring process. The deadline for Arizona LEAs to complete this corrective action will be listed in the notice and will be no later than January 15, 2011 on the interim procedures and January 15, 2012 on the long-term procedures. Within five (5) days of OCR's and DOJ's approval of the draft written notice required by paragraphs 24 and 25, AZDE will formally issue

the notice to all Arizona LEAs and provide OCR and DOJ with written confirmation that the written notice has been issued.

REPORTING

27. AZDE will submit electronic files of all English Language Proficiency test subscores and overall scores of PHLOTE and ELL students during each school year that this Agreement remains in effect, including each student's unique identifier, school district, school, grade, ELL status (*e.g.*, current ELL, IFEP, FEP), language background, test date, and purpose of the test (*e.g.*, placement or reassessment).
28. AZDE will submit electronic files of all AIMS subscores and overall scores of all students during each school year that this Agreement remains in effect, including each student's unique identifier, school district, school, grade, ELL status (*e.g.*, current ELL, IFEP, FEP by date of exit, and never-ELL/English-Only), language background, and test date.
29. To ensure compliance with this Agreement, OCR and DOJ may require additional monitoring reports or the ability to inspect data or other information maintained by AZDE as determined necessary by OCR and DOJ.

ENFORCEMENT OF THIS AGREEMENT

30. If, at any time, AZDE desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify OCR and DOJ in writing, setting forth the facts and circumstances thought to justify modification of this Agreement and the substance of the proposed modification. Until OCR and DOJ notify AZDE in writing that they have agreed to the proposed modification, the proposed modification will not take effect. Any modifications must receive the prior written approval of OCR and DOJ. This approval shall not be unreasonably withheld or delayed.
31. It is a violation of this Agreement for AZDE to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with OCR and DOJ for an extension of the relevant time frame imposed by the Agreement.
32. If OCR and DOJ believe that AZDE has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written permission from OCR and DOJ regarding a modification of the relevant terms under the terms set forth above, OCR and DOJ will so notify AZDE in writing and they will attempt to resolve the issue or issues in good faith. If OCR and DOJ are unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date they provide notice to AZDE, OCR and DOJ may take steps to initiate an enforcement action. This may include administrative proceedings through the Department of Education or as a referral to the U.S. Department of Justice, or the DOJ taking appropriate action to enforce the terms of this Agreement and to enforce Title VI, its implementing regulations and/or the EEOA.
33. Failure by OCR or DOJ to enforce this entire Agreement or any provision of it with regard to any deadline or any other provision shall not be construed as a waiver of OCR's or DOJ's rights to

enforce other deadlines and provisions of this Agreement, or of AZDE's obligation to comply with Title VI, its implementing regulations, or the EEOA.

34. This Agreement constitutes the entire Agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, shall be enforceable.
35. This Agreement does not purport to remedy any existing or potential violations of Title VI, its implementing regulations, the EEOA, or any other federal law other than those addressed in this Agreement. The Agreement does not affect AZDE's continuing responsibility to comply with these laws and regulations. For example, OCR and DOJ are investigating a complaint against AZDE regarding its English Language Development program. This Agreement does not resolve this complaint or any other regarding AZDE's compliance with Title VI, its implementing regulation, the EEOA, or any other federal law. For example, this Agreement does not resolve AZDE's noncompliance with Title VI and the EEOA with respect to its methods for identifying potential ELL students (involving the Home Language Survey and its supplemental teacher referral process).

IMPLEMENTATION OF THIS AGREEMENT

36. OCR and DOJ will continue to monitor AZDE's implementation of each item of this agreement until such time as they have obtained sufficient evidence to demonstrate that AZDE is in compliance with the provisions of Title VI and the EEOA applicable to this complaint. OCR and DOJ will not close the monitoring until they determine that AZDE is in full compliance the relevant statutory requirements.
37. During monitoring of this agreement, OCR and DOJ will visit AZDE and LEAs, interview staff, and students, and request such additional reports or data as are necessary for OCR to determine whether AZDE has complied with the terms of this Agreement and the provisions of Title VI and the EEOA that are applicable to this complaint.
38. This Agreement will remain in effect until OCR and DOJ determine that AZDE has fully complied with all of its provisions. Upon determining that AZDE has achieved full compliance with the terms of this Agreement, OCR and DOJ will conclude its monitoring and will notify AZDE that it is closing this case and terminating this Agreement.
39. The person signing for AZDE represents that he or she is authorized to bind AZDE to this Agreement.
40. The effective date of this Agreement is the date of the last signature below.

For AZDE:

For the U.S. Department of Education:

Signatory for AZDE Date

Mary Lou Mobley, Director Date
Denver Enforcement Office

U.S. Department of Education,
Office for Civil Rights, Region VIII

For the U.S. Department of Justice:

Amy Berman, Acting Section Chief Date
U.S. Department of Justice,
Civil Rights Division
Educational Opportunities Section
Washington D.C.