

RESOLUTION AGREEMENT
Arizona Department of Education
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 Department of Education (ADE) regarding ADE'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 alleged 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 alleged that this is due to ADE's use of the Stanford English Language Proficiency (SELP) test and, later, the Arizona English Language Learner Assessment (AZELLA) test (along with their respective scoring procedures), as the sole reclassification criterion for ELL students statewide. After a comprehensive investigation, OCR and DOJ found that between 2006 and 2012 ADE prematurely exited and underidentified tens of thousands of ELL students with the AZELLA 1 and 2 (the AZ-1 and AZ-2) in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations, and DOJ further found that ADE was not in compliance with the Equal Educational Opportunities Act (EEOA), 20 U.S.C. § 1703(f).
2. On August 31, 2012, ADE, OCR, and DOJ entered into a Resolution Agreement (2012 Agreement). The purpose of the 2012 Agreement was to stop and remedy ADE's premature exiting and underidentification of thousands of ELL students across Arizona with a short and long term plan. The short term plan secured reading and writing intervention services for approximately 28,000 ELLs who were prematurely exited and underidentified between 2006 and 2012 and still enrolled in Arizona local education agencies (LEAs); this short term plan has been completed. The long term plan requires ADE to implement a new, valid, and reliable English language proficiency (ELP) assessment beginning in school year (SY) 2012-13 for the purposes of identifying and exiting/reclassifying ELL students. Specifically, by July 31, 2013, the 2012 Agreement required ADE to adopt new, valid, reliable, and objective criteria for LEAs to use to ensure that each ELL student has obtained English proficiency in reading, writing, listening, and speaking and in the composite of comprehension (reading and listening) and the composite of oral (listening and speaking) before: (a) being identified as Initially Fluent English Proficient (IFEP); (b) being reclassified as FEP or Reclassified Fluent English Proficient (RFEP)¹; or (c) being required to exit English language acquisition services. ADE developed the AZELLA-3 (AZ-3) to serve as both its criterion for reclassification in grades K-12 and its test for identifying incoming ELLs in grades 1-12. ADE also developed the Kindergarten Placement Test (KPT) to identify incoming ELLs in Kindergarten beginning in SY 2012-13. Under Paragraph 39 of the 2012 Agreement, the parties agreed that if OCR and DOJ believed that ADE was violating the Agreement, OCR/DOJ would notify ADE in writing, the parties would have 30 days from the date of the notice to reach a satisfactory resolution of the compliance issue, and if this was not possible, the United States could initiate an enforcement action.

¹ "RFEPs" are students who have been reclassified and deemed proficient by the spring ELP assessment. During their first full school year of monitoring after exiting from the ELL program, these students are called "FEP1." During their second full school year, they are "FEP2."

3. Since August 31, 2012, OCR and DOJ have monitored ADE's implementation of the 2012 Agreement, and whether ADE has come into compliance with its obligations under Title VI and its implementing regulations and Section 1703(f) of the EEOA. As stated in several letters to ADE and the United States' final notice letter to ADE and accompanying Statement of Findings of Fact (SFF) on January 28, 2016, OCR and DOJ found that ADE underidentified thousands of Kindergarten ELLs under the KPT's proficient cut scores of 32 and 35 from SY 2012-13 to the present and thereby denied them access to ELL services.² In its January 28, 2016 Letter and SFF, the United States also notified ADE that it had violated the 2012 Agreement, Title VI, and the EEOA by failing to annually assess the English proficiency of approximately 4,248 Kindergarten ELLs whose parents had opted them out of ELL services for SY 2013-14 through SY 2014-15. ADE denies these opt-out and KPT violations, but has agreed to voluntarily resolve them through this Agreement.
4. The purpose of this Agreement is to ensure that ADE comes into compliance with its EEOA and Title VI obligations to: identify all Kindergarten ELLs in a timely, valid, and reliable manner; to offer them ELL services until they demonstrate proficiency in English (including in the oral, listening, reading, and writing skills); and to continue to annually assess the English proficiency of ELLs who decline ELL services until they are proficient in English.

JURISDICTION

5. Title VI and its implementing regulations at 34 C.F.R. pt. 100, and 28 C.F.R. pt. 42 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. ADE is subject to Title VI because it receives Federal financial assistance from the U.S. Department of Education and DOJ. OCR and DOJ enforce ADE's Title VI obligations.
6. Section 1703(f) of the EEOA requires that state and local educational agencies take appropriate action to overcome language barriers that impede equal participation by students in the instructional program. DOJ enforces the EEOA. ADE is subject to the EEOA because ADE is a state educational agency as defined by 20 U.S.C. § 1720.
7. In exchange for ADE's full and good faith implementation of the terms of this Agreement, OCR and DOJ agree to refrain from initiating an enforcement action under Title VI against ADE, and DOJ agrees to refrain from initiating litigation under Title VI, the EEOA, and the 2012 Agreement against ADE, including its Superintendent, regarding their KPT and opt-out violations set forth in the United States' notice letter and SFF dated January 28, 2016, except as expressly discussed in this Agreement.

REMEDIAL ACTION

8. OCR and DOJ have determined that ADE's use of the KPT to identify ELLs in Kindergarten in SY 2012-13, 2013-14, 2014-15, and 2015-16 and its failure to annually test the English proficiency of approximately 4,248 ELLs missed by the KPT who opted out of ELL services have violated Title VI, its implementing regulations, and the EEOA. ADE does not concur with OCR's and DOJ's determinations;

² In the January 28, 2016 letter, the United States further found that ADE prematurely exited and underidentified thousands of ELLs in grades 3-12 under the AZ-3 Stages III-V in violation of the 2012 Agreement, Title VI, and the EEOA. This Agreement does not resolve the United States' findings regarding the AZ-3 Stages III-V

however, ADE is willing to implement the following measures to voluntarily resolve the KPT and opt out compliance issues identified by the United States.

ACTION ITEM 1: RETESTING OPT-OUT ELLS

9. ADE agrees that it will require Arizona LEAs to reassess and reclassify former Kindergarten IFEP students from SY 2012-13 and SY 2013-14 who scored proficient on the KPT but below proficient on the AZ-3 Stage I Reassessment and opted out of ELL services thereafter. As set forth below, ADE will assess the ELP of the students in the grade 2 and grade 3 cohorts beginning in the Spring of 2016 through the start of SY 2016-17 until all of these students who remain enrolled in Arizona LEAs are assessed, reclassified based on those assessment results, and offered ELL services if identified as ELL, regardless of whether they continue to opt out.
10. ADE has identified all of the grade 2 students described in Paragraph 9 and made this list of students available to LEAs based on student enrollment. On March 16, 2016, ADE directed all Arizona LEAs to identify these students and administer an AZ-3 Stage II placement test to the identified grade 2 students before the end of SY 2015-16. For the grade 2 students described in Paragraph 9, ADE will identify students who score Proficient on the AZ-3 Stage II placement test as RFEP students and will identify students who do not score Proficient on the AZ-3 Stage II placement test as ELL students. ADE will direct LEAs to offer these ELL students ELL services beginning in SY 2016-17 (via notice to parents/guardians) until they demonstrate proficiency in English. If the parents/guardians decline the ELL services, ADE will classify these ELL students as ELL-Parent Withdrawal students and continue to annually assess their ELP until they demonstrate proficiency in English.
11. The grade 3 students described in Paragraph 9 will be taking the Spring 2016 AzMERIT grade 3 English Language Arts (ELA) assessment during the spring 2016 AzMERIT testing window. ADE agrees that any of the students who do not earn a "Proficient" or "Highly Proficient" score on the AzMERIT ELA will be identified for LEAs to provide a grade-level appropriate AZ-3 placement test at the beginning of SY 2016-17 to determine whether they are eligible for ELL services. For the grade 3 students described in this paragraph as requiring an AZ-3 placement test, ADE will identify students who score Proficient on the AZ-3 Stage III placement test as RFEP students and will identify students who do not score Proficient on the AZ-3 Stage III placement test as ELL students. In July 2016, ADE will direct LEAs to offer these ELL students ELL services in SY 2016-17 (via notice to parents/guardians) and until they demonstrate proficiency in English. If the parent/guardian declines ELL services, ADE will classify these ELL students as ELL-Parent Withdrawal students and direct LEAs to annually assess their ELP beginning with the Spring 2017 Reassessment until they demonstrate proficiency in English.
12. ADE has completed or will complete the following steps to facilitate the appropriate assessment and classification of ELL students in the SY 2012-13 and SY 2013-14 cohorts:
 - a. On **March 16, 2016**, ADE sent a letter to all Arizona LEAs explaining: (a) ADE's reclassification of the cohort IFEP students in grades 2 and 3 as ELL-Parent Withdrawal students; (b) the requirement to annually administer the AZ-3 reassessment to these students until they demonstrate proficiency in English; and (c) the requirement to offer ELL services when they do not demonstrate proficiency in English. (See Paragraph 10 above.)

- b. ADE will share the same information from its March 16, 2016 letter in newsletters produced by ADE's Office of English Language Acquisition Services (OELAS) Section for ELL directors and ADE's Assessment Section for AZELLA test directors before the end of SY 2015-16, at the **May 2016** Practitioners of English Language Learning (PELL) meeting which is attended by ELL directors and AZELLA test directors from most of Arizona's LEAs with significant ELL populations, and in the AZELLA District Test Coordinator's mandatory Placement Test training available beginning July 1, 2016.
- c. By March 17, 2016, ADE created a special report identifying the grade 2 students who were Kindergarten IFEP students, also scored below proficient on the Stage I Reassessment, initially declined ELL services, have not since been tested on any other non-KPT AZ-3 test, and have never been in ELL services as ELL-Parent Withdrawal students. ADE has ensured LEAs have access to this list based on student enrollment and has directed LEAs to administer an AZ-3 Stage II Placement test to these students before the end of SY 2015-16 consistent with the terms of this Agreement.
- d. The SDELL73 - ELL Student Need Report is used by schools to verify that they are including the correct students in AZ-3 Reassessment and by ADE for calculating the denominator in percent tested calculations for the AZ-3 Reassessment. ADE will ensure that the logic behind the SDELL73 - ELL Student Need Report will be updated so that the students who: (i) passed the KPT in SY 2012-13 and SY 2013-14; (ii) did not pass the subsequent Stage I Reassessment or any other non-KPT AZ-3 test; (iii) were not placed in ELL services; and (iv) have not passed an AzMERIT ELA test, are identified on the report as having an ELL need and coded as ELL-Parent Withdrawal students. ADE will ensure that this update will be completed before the start of SY 2016-17.

13. Reporting Requirements: ADE will provide OCR and DOJ with:

- a. A copy of the OELAS newsletter and Assessment Newsletter referenced in Paragraph 12(b), and the May 2016 PELL meeting agenda and materials related to Paragraph 12(b). These copies are due by **June 1, 2016**;
- b. A copy of ADE's March 17 report of grade 2 students by LEA required by Paragraph 12(c) by **April 25, 2016**;
- c. A list of the student SAIS IDs, by the LEA where the student was enrolled in SY 2015-16, for those grade 3 students identified under Paragraph 11 and to be included in the LEA reports identified in Paragraph 12(d) by **July 25, 2016**;
- d. The AZELLA District Test Coordinator's mandatory Placement Test training materials related to Paragraph 12(b) are due by **July 25, 2016**; and
- e. A list, by LEA, identifying any Arizona LEAs that have not completed all of the required AzMERIT and AZ-3 testing of the students required by Action Item 1 of this Agreement by **November 30, 2016**.

ACTION ITEM 2: RESETTING THE KPT CUT SCORE

14. Beginning in SY 2016-17, ADE will raise the KPT cut score from its current location at a scale score of 245 to a scale score of 257.³
15. To implement Paragraph 14, ADE will complete the following steps related to the KPT cut score:
 - a. By **May 2, 2016**, ADE will send a letter to all LEAs explaining the change to the KPT cut score set forth in Paragraph 14. ADE will share this same information in newsletters produced by ADE's OELAS Section for ELL directors and ADE's Assessment Section for AZELLA test directors before the end of SY 2015-16, and at the **May 2016** PELL meeting, which is attended by ELL directors and AZELLA test directors from most of Arizona's LEAs with significant ELL populations.
 - b. Beginning in SY 2016-17, ADE will revise all KPT scoring and reporting so that Kindergarten students with a Primary or Home Language Other than English (PHLOTE) must earn a KPT scale score of at least 257 to be identified as Proficient.
16. Reporting Requirements: ADE will provide OCR and DOJ with:
 - a. A copy of the ADE letter, OELAS newsletter, Assessment newsletter, and PELL meeting agenda referenced in Paragraph 15(a) by **June 1, 2016**; and
 - b. A copy of new SY 2016-17 KPT score reports showing a proficient cut scale score of not below 257 by **September 15, 2016**.

Action Item 3: Reevaluating KPT IFEP Students With KPT Scale Scores of 245 through Scale Scores of 256⁴

17. ADE agrees to work with Arizona LEAs to identify which of the IFEP kindergarten students from SY 2014-15 and SY 2015-16 with a KPT scale score that was below 257: are not currently in ELL services, do not have a subsequent non-KPT AZ-3 score, and are performing below grade level. Any IFEP Kindergarten students from SY 2012-13 or SY 2013-14 who are still in Kindergarten or grade 1 will also be included in this Action Item 3.

Specifically, ADE will complete the following steps to ensure that Arizona LEAs administer an AZ-3 placement test at the beginning of SY 2016-17 to the IFEP students performing below grade in SY 2015-16 and then offer ELL services to the students who are not proficient in English from the start of SY 2016-17 until they demonstrate proficiency in English:

³ In practical effect this means that ADE agrees that any students with a KPT score below a raw score of 38 will be considered an ELL and offered services beginning in SY 2016-17.

⁴ In practical effect this means that ADE agrees to direct LEAs to reevaluate KPT IFEP students with KPT raw scores of 35 through 37 as set forth in Paragraph 17.

- a. By **May 2, 2016**, ADE will send a letter to all Arizona LEAs explaining that the change in KPT cut score is retroactive to SY 2014-15 and that the English proficiency of IFEP students whose KPT scale scores were below the new 257 scale cut score, and are not currently in ELL services or do not have a subsequent non-KPT AZ-3 score, must be reevaluated to determine if they are ELL students. ADE will direct LEAs to first make the determination of whether the students identified as IFEP by the KPT in SY 2014-15 and SY 2015-16 are below grade level based on: (1) teacher input; (2) the student's report card grades; (3) the student's performance on AzMERIT ELA and required reading assessments; and (4) any other information available to the school related to the student's academic performance in SY 2015-16. ADE will direct LEAs to administer the grade-level appropriate AZ-3 placement test to these students at the beginning of SY 2016-17, to offer ELL services to all such students who do not score proficient on the test, to identify any of these ELL students whose parents decline ELL services as ELL-Parent Withdrawal students, and to test their ELP annually until they demonstrate proficiency in English. ADE will share this same information in newsletters produced by ADE's OELAS Section for ELL directors and ADE's Assessment Section for AZELLA test directors before the end of SY 2015-16, and at a **May 2016** PELL meeting, which is attended by ELL directors and AZELLA test directors from most of Arizona's LEAs with significant ELL populations.
- b. ADE will make available a new IFEP Follow-up survey to LEAs by the end of SY 2015-16. This survey will list, for each LEA based on their SY 2015-16 student enrollment, kindergarten and grade 1 IFEP students with a KPT scale score below 257, are not currently in ELL services, and do not have a subsequent non-KPT AZ-3 score. ADE will direct LEAs to determine whether the performance of each IFEP student was below/at/above grade level and to administer an AZ-3 Placement test within two weeks of the start of the school year to all students identified on the survey as performing below grade level. ADE will identify all students described in this Paragraph who do not score Proficient on the AZ-3 Placement test as ELLs and will direct LEAs to offer these students ELL services in SY 2016-17 and until they demonstrate proficiency in English. If the parent/guardian declines ELL services, ADE will classify these students as ELL-Parent Withdrawal students and direct LEAs to annually assess their ELP beginning with the Spring 2017 Reassessment until they demonstrate proficiency in English.
- c. ADE will revise the SDELL70 – AZELLA Student Test History Report to show that students identified on the survey as performing below grade level need an AZ-3 Placement Test. ADE will revise the SDELL73 - ELL Student Need Report to show that students identified on the survey as performing below grade level and who do not have a subsequent passing AZELLA score have an ELL need.

18. Reporting Requirements:

- a. ADE will provide to OCR and DOJ by **June 1, 2016**: A copy of the letter to LEAs, the OELAS newsletter, the Assessment newsletter, and PELL meeting agenda referenced in Paragraph 17(a).

- b. ADE will provide to OCR and DOJ by **June 1, 2016**: a copy of the new IFEP Follow-up survey, including each LEA's list of kindergarten and grade 1 IFEP students with a KPT scale score below 257, who are not currently in ELL services, and do not have a subsequent non-KPT AZ-3 score, per paragraph 17(b) above.
- c. ADE will provide to OCR and DOJ by **November 30, 2016**: For each Arizona LEA, the total number of these students who are administered AZ-3 Placement tests, the number of such students identified as ELL, and the number of such ELL students who accepted and opted out of ELL services in SY 2016-17.

ADE MONITORING AND OTHER REPORTING

- 19. ADE will monitor LEAs' implementation of the action required by Paragraphs 9-18 above through its OELAS monitoring process and where necessary, take action to ensure LEAs implement such action in a timely manner.
- 20. In each of the ADE notices and directives to LEAs required by this Agreement, ADE will notify LEAs that all of the communications with parents required by the above Action Items must be in a language the parents understand and must state that the purpose of the notification is to ensure that their children's educational needs are being met.
- 21. By June 15, 2017:
 - a. ADE will submit electronic files of all AZ-3 placement test and reassessment scores (including raw scores and scale scores by each of the domain areas, and overall scores) for each student subject to Action Items 1, 2, and 3 above, including each student's unique identifier, school district, school, grade, ELL status (IFEP, ELL, RFEP, FEP by year), language background (to the extent ADE receives this information), purpose of the test (i.e., placement or reassessment), and test date.
 - b. ADE will submit a copy of the revised KPT Test Map, Test Blueprint, and field test item information for all new items added to the refreshed KPT for use in SY 2017-18.
- 22. It is anticipated that the reporting required by this Agreement will end after SY 2016-17
- 23. To ensure compliance with this Agreement, OCR and DOJ may require additional monitoring reports and/or the ability to inspect data or other information maintained by ADE as determined necessary by OCR and DOJ.

ENFORCEMENT OF THIS AGREEMENT

- 24. If, at any time, ADE desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, ADE 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 ADE 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.

25. It is a violation of this Agreement for ADE 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 this Agreement.
26. If OCR and DOJ believe that ADE 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 ADE 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 ADE, 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 for litigation to the U.S. Department of Justice, or DOJ taking action to enforce the terms of this Agreement, Title VI, its implementing regulations, and/or the EEOA in administrative proceedings or in court.
27. Failure by OCR or DOJ to enforce this entire Agreement or any provision of it regarding 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 (e.g., the findings identified in footnote 2 above), or of ADE's obligation to comply with Title VI, its implementing regulations, or the EEOA.
28. 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. This Agreement does not affect ADE's continuing responsibility to comply with these laws and regulations.
29. ADE's participation in this Agreement in no way constitutes an admission of noncompliance with Title VI or the EEOA regarding this matter. In addition, ADE's participation in this Agreement in no way constitutes an admission of noncompliance regarding OCR/DOJ's investigation of the English Language Development Program, or any other matter involving ADE that is under investigation by OCR and/or DOJ or for which OCR and/or DOJ have received a complaint.

IMPLEMENTATION OF THIS AGREEMENT

30. This Agreement will remain in effect until OCR and DOJ determine that ADE has fully complied with all of its provisions. Upon determining that ADE has achieved full compliance with the terms of this Agreement, OCR and DOJ will conclude its monitoring and will notify ADE that it is closing this case and terminating this Agreement.

OCR and DOJ will consider this Agreement met and will close out the monitoring on this Agreement after review and approval of the submission of evidence required by this Agreement's action items. It is expected that monitoring of this Agreement will be closed by August 15, 2017.

31. During monitoring of this Agreement, OCR and DOJ may visit ADE and LEAs, interview staff, and students, and request such additional reports or data as OCR and DOJ view as necessary to determine whether ADE has complied with the terms of this Agreement and the provisions of Title VI and the EEOA that are applicable to this complaint. OCR and DOJ will provide sufficient notice to ADE prior to any visitations with or interviews of ADE staff. OCR and DOJ will provide ADE with

sufficient time to comply with any additional requests for reports or data and any reports or data requested will be relevant to this Agreement.

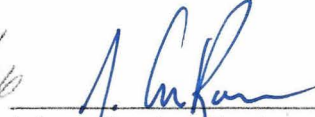
32. The person signing for ADE represents that she is authorized to bind ADE to this Agreement.

33. The effective date of this Agreement is the date of the last signature below.

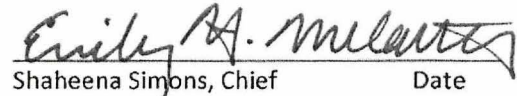
For ADE:


Diane Douglas, Date
Superintendent of Public Instruction

For the U.S. Department of Education:


J. Aaron Romine, Director Date
Erica Austin, Chief Attorney
Angela Martinez-Gonzalez, Supervisory Team Leader
Denver Enforcement Office
U.S. Department of Education,
Office for Civil Rights, Region VIII

For the U.S. Department of Justice:


Shaheena Simons, Chief Date
Emily H. McCarthy, Deputy Chief
Jonathan Newton, Trial Attorney
Navin Pant, Trial Attorney
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
Washington D.C.