



U.S. DEPARTMENT OF JUSTICE

*United States Attorney's Office
District of Rhode Island*

**Civil Rights Division
Educational Opportunities Section**

USAO DJ 2016V256

CRT DJ 169-66-10

*One Financial Plaza, 17th Floor
Providence, Rhode Island 02903
(401) 709-5000
FAX (401) 709-5001*

June 25, 2024

By Electronic Mail

Aubrey L. Lombardo, Esq.
Henneous Carroll Lombardo, LLC
One Citizens Plaza, Suite 1010
Providence, RI 02903

Anthony Cottone, Esq.
Kaelyn Phelps, Esq.
Legal Counsel
Rhode Island Department of Education
255 Westminster Street
Providence, RI 02903

Dear Attorneys Lombardo, Cottone, and Phelps:

We write to inform the Providence Public School District (the “District”) about the results of the compliance review of the District’s Newcomer Academy completed by the U.S. Department of Justice, through the Educational Opportunities Section of the Civil Rights Division and the United States Attorney’s Office for the District of Rhode Island (together, the “Department”). On May 1, 2024, we notified the District that we had compliance concerns about the Newcomer Academy, specifically relating to the District’s failure to provide multilingual learners (“MLLs”) at the school with designated periods of English Language Development (“ELD”), as required under ¶¶ 8-10 of the 2018 Settlement Agreement between the United States and the District (the “Agreement”).¹ We notified the District that we needed additional time and information to evaluate the program fully and to determine whether the District had fulfilled the terms of the Agreement and complied with the Equal Educational Opportunities Act of 1974 (“EEOA”). After conducting a visit to the Newcomer Academy with the Department’s expert consultant on May 21, 2024, and reviewing additional information about the program, we have determined that the District is failing to comply with the Agreement and the EEOA.

¹ On September 29, 2021, the parties modified and extended the 2018 Agreement. Accordingly, all references to the District’s obligations in the “Agreement” include the 2018 Agreement, as modified and extended in the September 29, 2021 letter agreement.

I. Overview of the Newcomer Academy

The District opened the present version of Newcomer Academy at the beginning of the 2023-24 school year to serve students who had limited or interrupted formal education (“Newcomers”)² and who were over the age of 17. During the 2022-23 school year, the District operated a program called the Newcomer Academy at Central High School which served over-age and under-credited Newcomers, but offered an academic program different from the current version of the Academy.³ The current Newcomer Academy serves 172 students, and another 57 students had been enrolled at some point during the 2023-24 school year. While most students were 17 or older, the District placed at least 19 students in the school who were 16 years old or younger at the time of enrollment. Upon reviewing the responses to our information request, we learned that on May 20, 2024, just one day before our visit to the school (and only a few weeks before the end of the school year), the District abruptly moved 14 of these 16-year-old students out of the program.

The 2023-24 Newcomer Academy was originally housed in classrooms at the Providence Career and Technical Academy (“PCTA”); the District later expanded the program by placing additional students in classrooms at Central High School. But students in the Newcomer Academy are almost completely separated from students at PCTA and Central High. They do not attend classes together or share daily non-classroom activities such as lunch periods. At present, students at the Newcomer Academy speak at least eight different languages, including Spanish, Swahili, Haitian Creole, Portuguese Creole, Arabic, Pushto, as well as K’iche’ and other Indigenous Mayan languages. The vast majority of students in the Newcomer Academy have an English proficiency level of 1 (the lowest level of proficiency), as defined by their overall ACCESS scores.

At the Newcomer Academy, students take accelerated core content courses and a career and technical education elective. The accelerated courses are designed to assist students to obtain credits and graduate on a two-year timeline. The school currently offers four English Language Arts courses, three social studies courses, two math courses, and one science course.⁴ As for career and technical education, students have the option to enroll in a class focused on carpentry, automobiles, culinary arts, general construction, welding, or graphics and communications. But the career and technical education program offered to Newcomers is different from the program offered at PCTA, as it does not include field components or the possibility of obtaining a certification.

² The District defines Newcomers as students with at least two years of limited or interrupted formal education. See Providence Public School District, ESL Programs, <https://www.providenceschools.org/Page/4150> (last visited on June 24, 2024).

³ See Providence Public School District, Newcomer Academy MLL Options SY2022-23, <https://www.providenceschools.org/cms/lib/RI01900003/Centricity/Domain/4/Newcomer%20Academy%20MLL%20Options%20SY2022-23%20-%20Pg%202.pdf>. (last visited June 24, 2024).

⁴ Students must take more than one science course in high school to meet state and District graduation requirements. See Providence Public School District, Graduation Requirements as of 1/1/2020, <https://www.providenceschools.org/cms/lib/RI01900003/Centricity/Domain/2665/Graduation%20Requirements.pdf> (last visited on June 24, 2024). As a result, the program at the Newcomer Academy cannot by itself provide students with all the credits they need to graduate. Instead, students must have obtained science credits from time at other schools.

For most of the 2023-24 school year, the District did not provide any designated ELD to students in the Newcomer Academy. Instead, the District stated that it “embedded” ELD into core content classes. To that end, the District noted that it adopted a curricular resource, Savvas, that provided guidance to teachers on embedding ELD into core content instruction. The District also noted that it had made available to Newcomer staff a curriculum called Bridges, which is designed to help Newcomers develop basic English language, literacy, and numeracy skills. But during our visit, administrators at the Newcomer Academy stated that teachers did not use Bridges.

II. Inadequate English Language Development and Access to Core Content Classes

The Agreement sets forth requirements governing the provision of ELD to multilingual learners. Specifically, the District must ensure that every MLL receives at least one daily period of ELD. Agreement at ¶¶ 8-9. And the District must provide a second period of ELD for students who need additional language instruction, including Newcomers, and students with an English language proficiency of Level 1 or 2. *Id.* at ¶ 10. We have, on occasion, agreed to allow the District to embed one period of ELD into a core English Language Arts class, but only after extensive discussion and evaluation of a proposed exemption to the general rule, and only on a case-by-case basis for narrowly defined populations. We have never agreed to broadly exempt Newcomers from receiving at least one period of designated ELD.

Students at Newcomer Academy are among the highest-needs population of MLLs in the District, with nearly every student at the lowest level of English language proficiency. To overcome language barriers to participate equally in the District’s programs, they generally need *more* ELD, not less. *See, e.g., Issa v. School Dist. of Lancaster*, 847 F.3d 121, 135 (3d Cir. 2017) (accelerated, non-sheltered program for MLLs is unsound for students with limited or interrupted formal education, who require that teaching proceed more slowly, build language skills, and fill in educational gaps). But, for most of the 2023-24 school year (and until the Department raised concerns), the District failed to provide even one period of designated ELD for these students. This clear violation of the Agreement deprived 229 students of English language instruction they needed to develop their language skills, including over 80 students who lost out on nearly a year of instruction they should have received.

The embedded ELD that the District claimed it was providing at the Newcomer Academy was not a meaningful substitute for the designated ELD periods required by the Agreement. Staff who were responsible for embedding ELD into core classes reported that they provided very little English language instruction in their classes. We confirmed this in our classroom observations during our site visit, when we saw core content teachers provide minimal ELD, which was not enough to help students with lower levels of English proficiency develop their language skills and meaningfully access the core content curriculum. Indeed, students at the Newcomer Academy were themselves aware of this deficiency, as nearly 50 students signed a petition (in Spanish) seeking additional English language instruction, and 82 students signed up to take ELD when it was finally offered—after the District received our May 1, 2024, letter noting our concerns. Of the 89 students who did not elect to participate in the optional ELD class offered before and after school hours, the majority cited conflicting time responsibilities (work or childcare) for not being able to participate, with a few saying they would like to take it in the fall.

In addition to the lack of adequate English language instruction, the District also failed to ensure students received adequate supports to access the content in their core classes. During our

visit, we observed numerous students in core classes who were disengaged or lost because they did not have the language proficiency necessary to understand the instruction. And we observed teachers struggling to ensure that students understood the contents of each lesson. Some teachers provided instruction almost entirely in Spanish,⁵ while others instructed students to repeat or copy English phrases or language without ensuring students understood their meaning.

The District has stated that it designed the Newcomer Academy, with accelerated core content instruction, access to career and technical education electives, and the lack of a designated ELD period, in an effort to provide a path to graduation for Newcomers who were under-credited and at-risk of dropping out. But, in light of the facts described above, it is not clear that there is a meaningful connection between Newcomers earning credits and graduating from the Newcomer Academy, and Newcomers overcoming language barriers there. *See Issa*, 847 F.3d at 138 (affirming preliminary injunction under the EEOA where refugee students, ages 18 to 21, were graduating from an accelerated credit recovery high school “with limited ability, if any, to converse in English—also often a prerequisite to future advancement—and limited understanding of the content of the courses [they] actually took”). Moreover, we have serious questions about the academic rigor of the curriculum offered at Newcomer Academy given the large number of classes students were enrolled in simultaneously.⁶ And even putting aside these concerns, the District’s own data consistently showed that the students who earned the most credits at the Newcomer Academy were those who had previously spent significant time, three semesters or more, at another District high school where they received a foundation of both ELD and core content instruction, while the students who struggled to earn credits at the Newcomer Academy had spent little to no time at schools other than the Newcomer Academy. This data suggests that prior enrollment in a general education high school that provided designated ELD played an important role in helping students transition to the Newcomer Academy.

III. Inadequate Staffing

Under the Agreement and the EEOA, the District is required to ensure that staff providing instruction to MLLs are qualified. In particular, the District must ensure core content and ESL teachers have appropriate certifications, or are co-teaching with staff with appropriate certifications. Agreement at ¶ 20. And the District must provide training to staff to ensure that they have effective strategies for teaching MLLs and promoting their English language development. *Id.* at ¶ 21.

The District failed to meet these requirements at the Newcomer Academy. While the District stated that every core content course at the school was taught by a teacher required to hold both content and ESL certifications, the data shows that there was not a single fully ESL-certified permanent teacher who was teaching at the Newcomer Academy for the whole 2023-24 year. There was a remarkable amount of staff turnover at the school during the year, as the Newcomer Academy lost four out of the seven permanent teachers initially assigned to provide core content instruction, as well as two MLL coaches, and an assistant principal. By the time of

⁵ As noted above, there were at least 40 students in the Newcomer Academy whose primary language was a language other than Spanish. Many of these students would be unable to access any of the content in a class taught primarily in Spanish.

⁶ The District shared schedules for 180 students enrolled at the Newcomer Academy in April 2024. Those schedules showed that the average student at the school was enrolled in about 9 classes, with 17 students enrolled in as many as 12 or more different classes.

our visit, the core content courses were mostly taught by teachers with emergency ESL certifications, long-term substitutes, and substitutes without certifications.

The District also failed to staff qualified co-teachers at the school for nearly all of the 2023-24 school year. On May 6, 2024, just days after receiving our notice letter, the District added three fully ESL-certified teachers to the school's staff. These teachers were assigned to teach ELD and to provide co-teaching support for teachers who were not fully certified (i.e., nearly all of the core content staff at Newcomer Academy). Before May 6, teachers who were not fully certified did not receive consistent co-teaching support as required by the Agreement. Consequently, for long stretches of the 2023-24 school year, students did not have regular access to qualified instructors.

The District also failed to ensure that staff were adequately trained and provided with feedback necessary to implement the program. While the District noted that staff received several trainings on sheltered instruction, staff reported being confused because of a lack of guidance on how to embed ELD into core content instruction, and how much to focus on English language instruction in their courses. Staff also noted that they did not receive consistent and clear feedback on these topics from administrators. Indeed, the assistant principal at the Newcomer Academy who had been in charge of instructional learning and who was responsible for overseeing and providing feedback on the implementation of embedded ELD from the start of the school year until she left the school on May 9, 2024, just one week after the District received our notice letter, was not ESL-certified.

IV. Failure to Ensure Language Access

The Agreement also requires the District to take steps to communicate certain important information to limited English proficient parents in a language they understand through translated documents and the services of a qualified interpreter. Agreement. at ¶¶ 31-32. This includes information about academics, language instruction and supports, student discipline, rights and responsibilities of parents and students, and benefits and services available to parents and students. *Id.* at n.4.

While the District has made concerted efforts to make translation and interpretation services available at its schools, key administrators and staff at the Newcomer Academy were not making adequate use of those resources. In one case, a member of the support staff who was tasked with interfacing with students and families to encourage attendance did not use the District's translation and interpretation resources with limited English proficient families. Most troubling was that administrators at the Newcomer Academy were unaware that this staff member was not using available communication resources, even though communicating with students and families was a central aspect of their job. This was not an isolated example at the Newcomer Academy. Indeed, logs of staff usage of the District's translation and interpretation service, Effectif, showed that staff only made minimal use of this service. While the log showed that administrators and staff sought translations of certain widely disseminated materials, it only included a few isolated requests for translations of more individualized communications. Similarly, the log did not include more than a handful of requests for interpretation services.

V. Unnecessary Segregation of Newcomers and Denial of Access to Special Education Program

To comply with the EEOA, districts must carry out their language instruction programs in the least segregated manner consistent with achieving the program's stated educational goals. U.S. Dep't of Justice and U.S. Dep't of Educ., Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, 22 (2015), citing to *Castañeda v. Pickard*, 648 F.2d 989, 998 n.4 (5th Cir. 1981). While districts may, under certain circumstances, provide separate academic instruction to English Learners for a limited period of time, there is almost no justification for separating students from non-English Learners for elective classes like physical education, art, and music, or for activities outside classroom instruction, such as lunch. *Id.*

Despite being in the same buildings as PCTA and Central High School, the District maintained the Newcomer Academy as a highly segregated program. Newcomer Academy students were scheduled for a separate lunch period from students at PCTA and offered elective career and technical education classes that were separate from classes offered to PCTA students in their same building. While the District only recently began offering physical education to students in the Newcomer Academy, that class is also separate from courses offered at PCTA and Central High School. Although the District made some efforts to integrate Newcomer Academy students into extracurriculars with students at PCTA and Central High School,⁷ it continued to unnecessarily segregate those students from students at PCTA and Central High School during the school day. There is no adequate justification for retaining separation in these classes and activities.

Districts must also ensure students in separate academic programs have access to important services, including special education. Indeed, the District is obligated under the Agreement to ensure that students are not denied special education services due to their EL status. Agreement at ¶ 35. The District's data raises significant concerns that the District is denying Newcomer Academy students equal access to participate in the District's special education program. The District reported that none of the 229 students who were placed in the school during the 2023-24 school year had an individualized education plan. The lack of students with disabilities at the school is striking, especially since, during the 2022-23 school year, over 11% of active MLLs in grades 9-12 in the District had individualized education plans. And while the District may have selected certain students without disabilities to initially transfer into the school at the beginning of the 2023-24 school year, that possible explanation would not apply to the over 60 students who were new to the District in 2023-24 and were placed in the Newcomer Academy soon after enrolling in the District.

⁷ The District has explained that Students at the Newcomer Academy had the opportunity to participate in athletics at PCTA or Central High School and attend prom at either school.

VI. Conclusion and Next Steps

Based on the foregoing, we have concluded that the District is failing to comply with the terms of the Agreement and with the EEOA. We request that the District provide its availability for a meeting within the next two weeks to discuss the steps necessary to ensure that the District comes into compliance with the Agreement and the EEOA and that the needs of all MLLs are being met in the District's schools. Agreement ¶ 47. If you have any questions, or would like to discuss further, please let us know.

Sincerely,



Ajay Saini
Laura Tayloe
Trial Attorneys
Civil Rights Division



Amy R. Romero
Assistant U.S. Attorney
District of Rhode Island