

U.S. Department of Justice Civil Rights Division Educational Opportunities Section

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June 8, 2009

Via Electronic and First-Class Mail

Darren Reisberg, General Counsel Irma Snopeck, Esq. Illinois State Board of Education 100 West Randolph Street, Suite 14-300 Chicago, IL 60601-3258-3169

Re: Illinois's Monitoring of District's English Language Learner Services

Dear Mr. Reisberg and Ms. Snopeck:

In response to the United States' May 7 letter notifying the Illinois State Board of Education (ISBE) that it is violating Section 1703(f) of the Equal Educational Opportunities Act (EEOA), ISBE and the United States participated in two telephone conferences – the first on May 15 and the second on June 5. This letter reflects the agreement we reached in our June 5 call regarding the actions that ISBE is willing to take to remedy its violations of Section 1703(f).

First, ISBE will draft an administrative rule that will require school districts in Illinois to provide language acquisition services to their English Language Learner students (ELLs) until they achieve a proficient score on the state-mandated English language proficiency assessment. Under the draft administrative rule, districts could satisfy this requirement by continuing Transitional Bilingual Education (TBE) or Transitional Program of Instruction (TPI) services beyond the three-year State law requirement until ELLs achieve a proficient score or by providing other appropriate and effective language acquisition services until this score is reached. The draft administrative rule will require districts to submit an annual plan to ISBE that explains the language acquisition services provided until ELLs achieve proficiency. ISBE will monitor these plans to determine if the services are appropriate and sufficiently implemented by the districts. The draft administrative rule will clarify 23 Ill. Adm. Code 228.25(c)(2)¹ so that districts understand that their federal obligation to provide appropriate language acquisition

¹ Section 228.25(c)(2) currently allows districts to exit ELLs from "the program of bilingual education services" even if they have not yet achieved a "proficient" score on the English language proficiency assessment as long as the ELLs have satisfied the three-year requirement for TBE and TPI services in Section 14C-3 of the Illinois School Code.

services to ELLs continues beyond the three-year State requirement for TBE and TPI services until ELLs achieve English proficiency.

Second, this summer ISBE will submit the draft administrative rule to the United States with adequate time for the United States to review and comment on the draft rule before ISBE presents it to the Illinois Board, most likely in September 2009. If the United States determines that the draft rule is satisfactory under Section 1703(f) of the EEOA, the United States will communicate this to ISBE in writing. The United States understands that the draft rule will be subject to 45 days of public comment and will require approval of the Joint Committee on Administrative Rules. In the unlikely event that the Joint Committee does not approve a satisfactory rule, the agreement reflected in this letter will cease, and the United States reserves all rights to enforce ISBE's obligations under Section 1703(f) of the EEOA.

Third, ISBE will submit to the United States for its review and comment draft Guidance regarding the new administrative rule either before or soon after (e.g., 30 days) the Joint Committee approves a satisfactory rule and prior to disseminating the Guidance to school districts. ISBE anticipates that this draft Guidance will recommend as a best practice that school districts continue TBE and TPI services beyond three years until ELLs achieve a proficient score on the state-mandated English proficiency assessment to satisfy their federal obligations. The draft Guidance will identify examples of other educationally sound language acquisition services that could satisfy these obligations (e.g., English as a Second Language, sheltered content, and dual language instruction). ISBE will publicize the Guidance to all school districts in Illinois through at least its website and annual State bilingual conference. Lastly, ISBE will apply the administrative rule and Guidance required by this agreement in its monitoring of districts' language acquisition services to ELLs.

As we discussed in our June 5 call, for educational reasons ISBE anticipates changing its exit criteria from a 4.0 composite score on ACCESS (the state-mandated English language proficiency assessment) to a 4.8 composite score with a minimum literacy score of 4.2 in the near future. In light of this, the draft Guidance should reflect this change and inform districts that their obligation to provide language acquisition services to ELLs continues until they achieve whatever the requisite numerical score on ACCESS is at the time ISBE issues the Guidance required by this agreement. The draft Guidance also should make clear that ELLs who reach this score but who subsequently require additional language acquisition services, as determined by the district's monitoring of former ELLs, may be reclassified as ELLs and receive such services.

We appreciate the steps that ISBE has proposed to address our May 7 letter, and please call me at (202) 305-3690 if you have any questions about the agreement reflected in this letter.

Sincerely.

Emily H. McCarthy

Special Litigation Counsel

cc: Robin Lisboa, DELL Division Administrator via electronic mail