



DEPARTMENT OF EDUCATION

REGION VIII
FEDERAL OFFICE BUILDING
1244 SPEER BLVD., SUITE #310
DENVER, COLORADO 80204-3582

OFFICE OF THE REGIONAL DIRECTOR
OFFICE FOR CIVIL RIGHTS

June 5, 2008

The Honorable Dr. Veronica Garcia,
New Mexico Secretary of Education
Jerry Apodaca Education Building
300 Don Gaspar
Santa Fe, NM 87501

Dear Dr. Garcia:

I am responding to an electronic inquiry of May 5, 2008, posed on behalf of Assistant Secretary for Assessment and Accountability Carlos Martinez to the U.S. Department of Education. Specifically, he requested clarification regarding whether a limited English proficient (LEP) student can be exited from an alternative language program on the basis of a composite score of "advanced proficient" on the New Mexico English Language Proficiency Assessment (NMELPA), "or if a student has to be advanced on all subtests of the NMELPA."

Consistent with Title VI of the Civil Rights Act of 1964, New Mexico and its school districts are responsible for maintaining alternative language programs to ensure limited English proficient (LEP) students become able to participate meaningfully in mainstream classrooms. We understand that New Mexico uses "advanced proficient" composite NMELPA scores as the sole criterion by which to exit students from these alternative language programs. Please be assured that we will accept NMELPA composite scores so long as the State can provide information such as a reliability study from the testing publisher that demonstrates the NMELPA is reliable and valid for this intended use, i.e., as the sole criterion on which to exit LEP students from alternative language programs. If New Mexico provides such information, OCR will not require districts to go through a 2-pronged analysis to show that a student is "advanced proficient" on a composite score and then additionally show the student is "advanced proficient" in each of the four skill areas (oral, reading, writing, and comprehension).

OCR's position is consistent with the Department's recent Notice of Proposed Interpretation for Title III:

the Secretary proposes to interpret Title III to allow States to base their student performance expectations and accountability targets for attainment on assessment

results derived from either (1) separate student performance levels or scores in each of the language domains or (2) *a single composite score or performance level derived by combining performance scores across domains, provided that such a composite score can be demonstrated to be a valid and effective measure of a student's proficiency in each of the English language proficiency domains.*

Notice of Proposed Interpretation, 73 Fed. Reg. 24266, 24267 (May 2, 2008) (emphasis added).

OCR stands ready and willing to work closely with you to assist you in maintaining educational programs for LEP students that comply with Title VI. If you are interested in receiving some technical assistance on this issue, please do not hesitate to contact me at 303-844-5695.

I hope this information is useful to you.

Sincerely,



Mary Lou Mobley
Regional Director

cc: Ms. Stephanie J. Monroe,
Assistant Secretary for Civil Rights
U.S. Department of Education

Mr. Carlos Martinez,
Assistant Secretary for Assessment and Accountability
New Mexico Public Education Department
Jerry Apodaca Education Building
300 Don Gaspar
Santa Fe, NM 87501