



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION IX  
CALIFORNIA

January 12, 2017

Richard Martinez  
Superintendent  
Pomona Unified School District  
800 S. Garey Avenue  
Pomona, CA 91766-3325

(In reply, please refer to Case No. 09-14-1042.)

Dear Superintendent Martinez:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Pomona Unified School District (District). The Complainant<sup>1</sup> alleged that the District discriminated against her on the basis of national origin language minority status. In addition, the Complainant alleged that the District discriminated against her son (Student) based on disability. OCR investigated the following allegations:

1. Whether the District denied the Complainant, a limited English proficient (LEP) individual, the opportunity to meaningfully participate in school related matters by failing to provide adequate interpreter services during the Student's individualized education program (IEP) meetings held on May XX, 2013 and September XX, 2013;
2. Whether the District denied the Complainant the opportunity to meaningfully participate in school-related matters by failing to provide her with written translations of the Student's IEP, evaluation, and other special education documents; and
3. Whether the District failed to provide the Student with a free, appropriate public education (FAPE) during the 2013-2014 school year by not implementing the Student's IEP, specifically with respect to the provision of 30 minutes of math specialized academic instruction.

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<sup>1</sup> OCR notified the District of the Complainant's and the Student's identities when the investigation began. OCR is withholding the Complainant's and the Student's names from this letter to protect their privacy.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. These laws prohibit discrimination on the basis of race, color, national origin, and disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction under Title II of the Americans with Disabilities Act of 1990 over disability discrimination complaints filed against public educational entities. The District receives funds from the Department, is a public educational entity, and therefore is subject to these laws and their regulations as enforced by OCR.

To investigate this case, OCR interviewed the Complainant, the Student, District administrators and staff, and reviewed documentation provided by the Complainant and the District. After a careful review of the information gathered, with respect to the first allegation, OCR concluded that there was sufficient evidence to support a violation of Title VI and its implementing regulations for the failure to provide adequate interpreter services at the May 10<sup>th</sup> IEP meeting. With respect to the September 20<sup>th</sup> IEP meeting, OCR's investigation to date raised concerns about the quality of the interpretation services provided. Prior to concluding that investigation, the District expressed an interest in reaching a voluntary resolution, and OCR agreed that one was appropriate.

With respect to the second allegation, OCR concluded that there was sufficient evidence to support a violation of Title VI and its implementing regulations related to the provision of written translation services. With respect to the third allegation, OCR has determined that the issues have been resolved through an investigation and decision issued through the California Department of Education (CDE), after the Complainant filed a complaint raising similar issues as were raised in this instant complaint with OCR, and is administratively closing the allegation.

The applicable legal standards, the relevant facts gathered, and the reasons for OCR's determinations are summarized below.

### **Legal Standards**

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others.

On May 25, 1970, pursuant to its authority under Title VI, the Department of Education issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11,595. The memorandum clarified OCR policy under Title VI regarding the responsibility of school agencies to provide equal educational opportunity to limited English

proficient national origin minority students. It states that school districts must take affirmative steps to address the language needs of limited English proficient students (English Language Learners).

The May 25th memorandum states that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. School districts have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any programs, service, or activity of a school district that is called to the attention of non-LEP parents.

School districts must develop and implement a process for determining whether parents are LEP and identify their language needs. The process should be designed to identify all LEP parents, including parents or guardians of children who are proficient in English and parents and guardians whose primary language is not common in the district. It is important for schools to take parents at their word about their communication needs if they request language assistance. School districts must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and training in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

*Allegation 1: Whether the District denied the Complainant the opportunity to meaningfully participate in school related matters by failing to provide adequate interpreter services during the Student's IEP meetings held on May XX, 2013 and September XX, 2013.*

*Allegation 2: Whether the District denied the Complainant the opportunity to meaningfully participate in school-related matters by failing to provide her with written translations of the Student's IEP, evaluation, and other special education documents.*

## **Findings of Fact**

### Background

- At the time the complaint was filed on November 5, 2013, the Student was a seven year-old, second grade student attending a District elementary school (School 2). Before this, he attended a different District elementary school (School 1) with an IEP. In the fall of 2013, he transferred to School 2. In his IEP dated August XX, 2013, the Student's eligibility category is listed as Other Health Impaired, ADHD.
- The Student's home language is Spanish and his parents (including the Complainant) are LEP. However, the Student is not categorized as an English Language Learner (ELL) student.
- According to the District, the family's home language survey states "English."
- Language group data from the California Department of Education shows that District-wide, during the 2013-2014 school year, 57.7% of the District's student enrollment was comprised of ELL and Fluent English Proficient (FEP) students whose primary home language was Spanish and for School 1, this group was 30.54% of the total school enrollment. In 2013-2014 at School 2, the ELL and FEP students whose primary home language is Spanish was 56.90% and 50.00% respectively, of the total school enrollment.
- According to the Complainant, she and her husband are LEP, and both need interpreter services for all IEP and assessment meetings and parent-teacher conferences and need all documents to be translated. The Complainant told OCR that while she has difficulty speaking and reading English, she is able to comprehend verbal responses better than she is able to speak and read in English.
- The Complainant stated that she attended three IEP meetings from May 2013 through September 2013, and that in two of those meetings, on May XXXX held at School 1 and on September XXXX held at School 2, the interpreters did not know how to translate important special education terms and did not translate all of the information discussed at the meetings. She stated that she was frustrated because she could not understand what was going on during the meetings, and the interpreters

did not accurately interpret the statements that she made to the rest of the team, which made it difficult for her to participate.

- The Complainant requested written translations of the IEPs from those two meetings, but did not receive the translated May XX, 2013 IEP until January XX, 2014 (over eight months later) and the September XX, 2013 translation until either October XX, 2013 or November XX, 2013. With respect to the September XXXX meeting, the District was unsure of the date of receipt because there is no log of translations completed or sent.
- The Complainant told OCR that she notified the District verbally and in writing before the May 2013 IEP meeting that she wanted a qualified interpreter for IEP meetings.
- The Complainant told OCR that she advised the District Special Education Director that the school site employees, who interpreted for her and her husband at IEP meetings held on May XXXX and September XXXX were not knowledgeable in special education terminology and that they did not interpret all of the information discussed. She said that she provided the Special Education Director with the names of the interpreters and the dates of the IEP meetings where the interpretation was not accurate.
- The Complainant told OCR that the interpreter at an August XX, 2013 IEP meeting provided adequate services since the Complainant understood the meeting conversation and could participate in the discussion as it progressed. However, although she requested a written translation of the IEP from the Case Carrier during the meeting, she did not receive it until November XX, 2013 (over three months later).
- The Complainant told OCR that she did not sign the IEPs until she received the translations.
- A Witness interviewed by OCR who is bilingual/biliterate stated that she has participated in IEP meetings where some District employees did not know how to interpret special education terminology. The Witness stated that, in contrast, the professional interpreters contracted by the District for particular meetings are qualified and have accurately interpreted exactly what is said into Spanish.

May XX, 2013 IEP Eligibility Meeting:

- The Office Manager (Interpreter 1) at School 1 provided interpreter services at the May XX, 2013 IEP eligibility meeting. The Complainant stated that she was not able to participate meaningfully in the Student's educational program due to Interpreter 1's inability to provide accurate oral interpretation services during the meeting. She said that Interpreter 1 did not interpret all of the information discussed during the IEP meeting; she could not accurately interpret special education terminology; and she was

not proficient in Spanish. The Complainant told OCR that Interpreter 1 would interpret part of the information, omit information, and interpret some of the information incorrectly. For example, she said that the IEP team would converse for long periods of time and Interpreter 1 would only interpret one to two sentences.

- The Complainant said that an IEP team member made a comment that the Student does not need special education, because he “has good grades”; the Complainant told the team in Spanish that, “[The Student] has social and behavior needs, and self-esteem problems, and for these reasons he needs special education services.” The Complainant said that Interpreter 1’s interpretation of her response was: that “[the Complainant] would like more help for [the Student].” The Complainant also said she told the IEP team that she had received information from the California Department of Education indicating that based on a medical diagnosis of the Student, he might be eligible for special education. The Complainant said that Interpreter 1 inaccurately interpreted her comment, as “she has been communicating with a public counselor and he has been giving her information.”
- Interpreter 1 confirmed that at the time of the May XXXX IEP meeting, School 1 provided the Complainant with only an English copy of the proposed IEP. The Complainant told OCR that she could not understand the document. School 1 told OCR that Interpreter 1 orally translated the document into Spanish.
- The Complainant asked School 1 to provide a professional and qualified interpreter for the next IEP meeting and a written translation of the IEP document.
- Interpreter 1 stated to OCR that she was the only individual at the IEP meeting who spoke Spanish and she had to use Google translate on her smartphone. In her interview with OCR’s bilingual/biliterate investigator, Interpreter 1 could not accurately translate some common special education terms. Interpreter 1 also told OCR that if her smartphone is not able to access the internet, she would try to use a computer with internet access in the room. Otherwise, she would have to leave the room to obtain the translation of the terminology.
- The District did not have an audio recording of this meeting.

August XX, 2013 IEP meeting:

- At the August XX, 2013 IEP meeting, the Complainant stated that the District provided a non-District interpreter from Language Resources America (LRA) Interpreters, Inc., a contractor. She said that the LRA interpreter provided a clear and precise interpretation and interpreted all of the information at the meeting. The LRA interpreter also orally translated

the proposed IEP, which was provided to the Complainant in English. The Complainant said she was satisfied with the translation services provided by the LRA interpreter.

- The Complainant requested a written translated copy of the IEP at this meeting.

September XX, 2013 IEP Meeting:

- The Instructional Aide for Special Education and Severely Handicapped Students at School 2 provided interpretation services at the September XX, 2013 IEP meeting (Interpreter 2). The Complainant had the same issues with interpretation at this meeting, as at the May XX, 2013 IEP meeting. She told OCR that Interpreter 2 did not interpret all of the information during the IEP meeting and did not interpret the special education terminology correctly.
- The Complainant was given the IEP document in English at the meeting. She advised the IEP team that she would not sign the IEP until it was translated because she did not understand what it said.
- The Complainant told OCR that she advised the IEP team that, "The reason that we are here is because we need clarification of how the services for [the Student] are being implemented. It is very important for us to know how you are working with [the Student]." The Complainant said that based on her English listening comprehension, she understood Interpreter 2 to say, "The [Complainant] would like to get information about services for [the Student]."
- The Complainant told OCR that the Principal said that, "[The Student] was a child who saw only what he wanted to see; for [the Student] if it was not white, it was black". The Complainant responded to the Principal that, "my son has a disability and it is necessary that we understand his needs; that is why he has an IEP." However, the Complainant said that Interpreter 2 inaccurately interpreted this as, "The [Complainant] said that [the Student] has a disability and that is why he is on an IEP".
- The District did not have an audio recording of this meeting.

February X, 2014 and April XX, 2014 IEP Meetings:

- The Complainant told OCR that she requested a professional and qualified interpreter for the next IEP meetings on February X, 2014 and April XX, 2014, and that the interpreter (Interpreter 3) orally translated the IEP into Spanish during the meetings, and that the Complainant requested a translated copy of the IEP. The Complainant did not have any complaints about the interpretation services provided by Interpreter 3, who is a private contractor.

Oral Interpretation – Procedures & Systemic Issues:

- The District's policy regarding interpretation and translation is outlined in the "Cadre Guidelines and District's 3-tier bilingual proficiency system" stated below. For interpretation, the District uses District employees first as interpreters before requesting an interpreter from Language Resources America (LRA), the interpretation service company with which the District contracts for professional interpreters.
- During interviews with OCR, Interpreters 1 and 2 told OCR that (1) training had not been provided to each of them on how to provide interpreter (or translation) services; (2) they had received no training in interpreting medical or special education terminology for IEP/Section 504 meetings; (3) the District did not provide an English-Spanish dictionary or glossary to interpretation staff that explains how to interpret/translate special education terminology to use to interpret at IEP or Section 504 meetings and/or to provide written translation of IEPs or special education documents/assessments; (4) the District did not provide a copy of the draft IEP to the interpreters to review prior to the IEP meetings; and (5) the interpreters used the Google translate App on their phones, if they did not know how to interpret a specific disability or medical term. Interpreters 1 and 2 told OCR that it would be helpful to get a copy of the draft IEP prior to providing interpreter services at an IEP meeting.
- The District utilizes a 3-level system to identify the bilingual proficiency of District staff. District staff may provide translation and interpretation services at a particular level, once they pass the test associated with a level in the system:
  - Level I: Entry Level – Oral communication in person and/or the telephone.
  - Level II: Intermediate Level - Communication involving a third party; "routine translation in writing consistent with the job description, along with the language skills required in Level I."
  - Level III: Advanced Level – Specialized work in translating in writing. This level requires both reading and writing skills in the second language, along with the language skills required in Levels I and II.
- The District provided documents showing that Interpreter 1 passed both the District's Bilingual Test Level 1 and Level 2. By way of declaration, Interpreter 1 stated that she is familiar with special education terminology and services.
- The District provided documents showing that Interpreter 2 passed the District's Bilingual Test Level 1. By way of declaration, Interpreter 2 stated

that she had become knowledgeable about special education terminology and services through her work.

- In the interview with OCR, Interpreter 2 stated that she is familiar with deaf and hard of hearing students and cochlear transplant terminology and that she interprets at IEP meetings for parents with deaf or hearing impaired students. Interpreter 2 would not interpret common special education terms applicable to the Student during the interview with OCR.

Promptness of Written Translations:

- The District took:
  - more than eight months to provide the Complainant with a translated copy of the May XX, 2013 IEP, received January XX, 2014;
  - between a little over one month to three months to provide a translation for the August XX, 2013 IEP (translated October XX, 2013 or November XX, 2013);
  - between less than a month to two months for the translation of the September XX, 2013 Addendum IEP, on either October XX, 2013 or November XX, 2013 (the District's Data Entry Clerk/Special Education Translator, could not remember the exact date that this IEP was translated).
  - three months to provide translation for the Student's Psychological Assessment Report, which the District stated was completed on November XX, 2013.

Procedures Governing Written Translations:

- The District's Special Education Data Entry Clerk/Translator (Clerk) is in charge of the Cadre, which is a group of about 30 District staff members who translate IEPs, evaluations, and assessments. The Clerk told OCR that she completed and passed the District's Level III bilingual exam for translators.
- Each person in the Cadre is authorized 80 hours of translation per semester. The Clerk gives Cadre members documents on a weekly basis and the translation is done on an overtime basis, after work or on the weekends only when school is in session. When she receives the translations, she corrects them, but many of the translations are sent directly to parents/guardians without her review. She also stated that Cadre translators are provided with a Spanish-English "dictionary with special education words". The Cadre members also use Google translator.
- The Special Education Program translation program has to be approved by the Board, and it is approved each semester. The Clerk stated that

written translations are not provided to LEP parents until the budget is approved each year, and that the District does not provide any type of translations over the summer because there is no budget.

- The District advised OCR that the policy regarding time frames or turnaround time on IEPs or other special education documents is in the “Cadre Guidelines” (Guidelines). The District provided OCR with a one page document entitled, “IEP Translation Cadre Process.” It states that the Special Education Department has established a process where District staff who have BLCAD (Bilingual, Cross-cultural, Language and Academic Development), certification and “Level III” translators provide written translation of IEP documents into Spanish. BCLAD is an authorization to provide specialized instruction to English Language Learner students, certification is obtained through guidelines for coursework and/or testing established through the California Department of Education (CDE) in conjunction with the California Commission on Teacher Credentialing (CCTC).<sup>2</sup>
- The Guidelines state that the Clerk will log in information for requested IEP translations and mail the completed documents to families. The Clerk informed OCR that she did not maintain a log of translation requests, was unaware that the District should do so, and did not keep a record of when IEPs or any type of documents were sent to the Complainant or other parents in the District.
- The District Program Administrator told OCR that the District tries to provide translations to parents as soon as possible, but it can take up to 90 days from the original request. The Clerk stated that IEPs normally take about a year to translate because there are not enough personnel assigned to complete all of the translations in a timely manner.
- The Clerk stated that the District does not normally translate assessments unless the parent(s) request it, and then it is treated as a special request. The Clerk also noted that written translations provided are of varying quality and that some are “bad.”
- The Guidelines state that Board approval is required for “extra pay” for translation work and that a form must be submitted to the Special Education Department to request such pay. The Guidelines state that translators will receive two IEP documents at a time and provides how many hours of payment an individual will receive for translation of various lengths of IEP:

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<sup>2</sup> [http://www.ctcexams.nesinc.com/about\\_CTEL.asp](http://www.ctcexams.nesinc.com/about_CTEL.asp)

IEP 1 to 15 pages	4 hours
IEP 16 pages to 25 pages	5 hours
IEP 26 pages to 35 pages	6 hours
IEP 36 pages to 45 pages	7 hours

- A monthly record for work completed along with a time sheet is required of Spanish language IEP translators. The documents provided to OCR did not include a statement about the required or recommended timeframe for completing the translation after an evaluation or IEP has been concluded and/or after a request for translation has been made.

## Analysis

### Interpreter Services

Under Title VI requirements, the District has an obligation to adequately notify LEP parents of school programs and activities about which non-LEP parents are notified. This includes a duty to ensure that LEP parents have meaningful access to important information about their child's educational program and the opportunity to meaningfully participate. This obligation requires the District to provide LEP parents with oral interpretation and/or written translation of important information and documents in their primary language where necessary to ensure that they can meaningfully participate in their child's education.

During the time period relevant to this case, the District enrollment reflected a significant number of students from families where the parents or guardians have limited English proficiency. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities.

Interpreter services for LEP parents during IEP meetings is critical and necessary to their ability to understand what FAPE services are or are not being offered to the student and their ability to advocate on behalf of the student as one of the recognized IEP team participants. If the interpreter services do not provide meaningful access for the parent/guardian to the IEP meeting, then the meeting is not a truly interactive or individualized process and the parent is denied the ability to meaningfully participate in the decision-making process.

In this case, OCR concluded that the Complainant was not able to participate meaningfully in the Student's educational program during the May XX, 2013 IEP eligibility meeting because Interpreter 1 could not provide accurate verbal interpretation of special education terminology that would have been relevant during the meeting. OCR also found the Complainant credible when she described to OCR the ways in which the interpretation provided did not allow her to participate, including because Interpreter 1 did not translate what she and others said verbatim, sometimes interpreted only part of the information, omitted

information, or interpreted the information incorrectly, and was not able to interpret all special education terminology, which meant that the Complainant was unable to understand key information about the Student's evaluation results and the input of the team members about the proposed education program. For example, she said that Interpreter 1 would only interpret one or two sentences for long conversations.

In reaching this determination, OCR also found it significant that Interpreter 1 acknowledged that she had not been trained in special education terminology and would rely on her smartphone to look up such terms in Spanish during IEP meetings, that she had not received any training from the District or otherwise in providing interpretation services generally or at IEP meetings, and that she had not received or reviewed a glossary of special education terminology. Interpreter 1 also told OCR that she sometimes would have to leave the room to obtain the translation of the terminology because of a lack of internet connection, and in her interview with OCR was unable to translate some common special education terms.

The Complainant made similar complaints about the September XX, 2013 IEP interpreter (Interpreter 2). She said the interpreter did not interpret all of the information during the meeting and could not provide accurate verbal interpretation of special education terminology that would have been relevant during the meeting. As in the May XXXX IEP meeting, the Complainant was given the IEP document in English and conveyed to the IEP team that she did not understand what it said. The Complainant told OCR that Interpreter 2 did not provide an oral translation of the document at the meeting. The Complainant stated that based on her English listening comprehension, she could tell that some of her comments or questions were substantively misinterpreted. Documents provided by the District show that Interpreter 2 had only passed the Level I proficiency exam; she also acknowledged that she had not been trained in special education terminology, but had learned some terms applicable to deaf and hard of hearing students. Interpreter 2 said she would often rely on her smartphone to look up such terms in Spanish during IEP meetings, that she had not received any training from the District or otherwise in providing interpretation services generally or at IEP meetings, and that she had not received or reviewed a glossary of special education terminology. In the interview with Interpreter 2, the Interpreter would not provide translation of common terms applicable to the Student. OCR would need to conduct a further interview of the Interpreter to assess her ability with other special education terms and her ability to contemporaneously interpret. As stated above, the District has voluntarily agreed to enter into a resolution agreement to resolve the Title VI concerns associated with the September XXXX meeting.

#### Written Translations

With regard to whether the District denied the Complainant the opportunity to meaningfully participate in school related matters by failing to provide written translations of requested IEP documents for the Student's IEP meetings the

preponderance of the evidence supports a conclusion that the District failed to comply with Title VI requirements.

IEPs are a type of document for which timely translated documents are necessary because of their critical importance in providing educational opportunity to a student with a disability. In this instance, the IEP for the May 10th meeting was not provided to the Complainant for more than eight months after the IEP meeting was held. As such, the failure to provide adequate interpretation services was compounded by the failure to provide a timely written translation of the IEP document.

OCR concluded that the Complainant was not able to participate meaningfully in the Student's educational program due to the significant delay in receiving translated IEP documents after the May XXXX IEP meeting. In contrast to her English-speaking counterparts, the Complainant was unable to review a written copy of the IEP plans and meeting notes in a timely manner in a language she could understand prior to being asked for her views and recommendations.

For the September XXXX IEP meeting, the investigation raised concerns that the Complainant did not receive a translated IEP until the second week of October, or third week of November, a time-frame between three to eight weeks after the IEP meeting. Because concerns were also raised about the oral interpretation, the delay in providing the translated IEP may have resulted in a denial of meaningful access to the Complainant.

The District stated in its response to OCR that issues with receipt of timely written translation may have resulted because although the Complainant had requested translation for some IEP documents, she had not done so for others, and the family's home language survey stated "English." However, the Complainant identified herself as a LEP parent when she requested interpreter services for the May XXXX and September XXXX IEP meetings, and when she requested translated IEP's after each of those meetings. OCR considers this to be sufficient notice to the District that the Complainant is a LEP parent for whom important documents such as each IEP plan and meeting notes should be translated. As such, OCR notes that the District cannot rely alone upon the home language survey as a justification for not providing translated documents for other important documents outside of the May XXXX and September XXXX IEPs.

OCR's investigation also raised concerns about the District's overall ability to timely complete translation of documents for LEP parents. In this regard, different individuals in the District provided differing responses regarding the timeline for translation. The District Administrator stated that Spanish translations can take up to ninety days to complete, while the Clerk noted that there are significant personnel shortages resulting in insufficient translation staff resulting in time-frames up to a year to provide requested Spanish translations.

The Clerk stated that requests for document translation made towards the end of the school year, for example, in May, are delayed throughout the summer because they do not have funds supporting interpreter and translation services during the summer. There was a limit on the number of hours available to Cadre members who provided translation and that delays in budget approval have caused other delays. In addition, while the District's policy requires that staff maintain a log of requests for written translation and when such translations are provided to parents/guardians, the District could not produce such a log. Furthermore, the District's policy on translations does not include any requirements for timely provision of translated documents. In addition, OCR's investigation raised concerns because the Clerk who oversees the Cadre translation group told OCR that she receives translations of varying quality and that some translations are "bad."

Based on the above information, OCR determined that there was sufficient evidence to support a finding of noncompliance as to the provision of written translation for the May XXXX IEP meeting and the investigation raised concerns about the lack of timely provision of written translation after the September XXXX IEP meeting and District-wide issues with both the timeliness and quality of written translations. The District expressed an interest in resolving these concerns prior to the completion of the investigation with a Resolution Agreement reached pursuant to section 302 of OCR's case processing manual; to complete the investigation of the systemic issues, OCR would need to request and review additional written translations and interview Cadre translators, staff, and possibly parents.<sup>3</sup>

*Allegation 3: Whether the District failed to provide the Student with FAPE in the 2013-2014 school year.*

### **Findings of Fact**

- In this case, the Complainant alleged that during the 2013-2014 school year, special education staff at School 2 failed to implement the Student's academic services accommodation of thirty minutes of math support each day because the Complainant believed they did not provide him with either enough attention or guidance on how to do a math problem step-by-step or they did not do so sufficiently on a one-on-one basis. The August XX, 2013 IEP states that the Student would be provided with "group specialized academic instruction" (SAI) for one thirty minute session per day." (emphasis added) This service was to be provided by a Resource Specialist. The August XX, 2013 IEP did not specify the subject matter for

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<sup>3</sup> Because OCR did not receive an English and a Spanish language translated copy of the Student's August XX, 2013 psychoeducational assessment report until December 22, 2016 more than a month after negotiations had commenced, OCR did not analyze the quality of the translation for purposes of this investigation.

the SAI, i.e., math, English, etc. In addition, it provided that the time could be divided, for example: 15 minutes in the morning and 15 minutes in the afternoon.

- OCR opened the FAPE allegation on February XX, 2014, after the investigation began for race based allegations. Late in its investigation, OCR learned that on February XX, 2014 the Complainant had filed several allegations with the District, one of which was the same FAPE based SAI allegation made to OCR, namely failure to implement 30 minutes of SAI services. The Complainant appealed its decision with the California Department of Education's (CDE) Education Equity Uniform Complaint Procedures Appeals Office on October X, 2014 after receiving a translated letter of its findings.
- In order to obtain a complete record, OCR obtained documents directly from the CDE showing that it found on August XX, 2015 that the District failed to implement the Student's IEP and required Corrective Action, namely offering the Student five hours of compensatory specialized academic instruction in math and requiring staff training on IEP implementation. On November XX, 2015, CDE determined that the District had implemented the required actions and CDE provided the District with notice that the appeal was closed.
- Specifically, CDE identified the allegation as "once the IEP added a requirement to provide 30 minutes of specialized academic instruction daily, the school failed to do so." As such, CDE's timeframe began on August XX, 2013, which was the first time that the team identified SAI services. The CDE decision was issued on August XX, 2015 and covers a time period longer than the time period covered by this investigation. CDE did not make a specific finding as to the 30 minutes, but instead made a general finding that the District failed to fulfill the IEP and discriminated against the Student.

## **Analysis**

Pursuant to section 110(e) of OCR's Case Processing Manual (CPM), when OCR receives information showing that the allegations presented in a complaint have been resolved, there are no systemic allegations to be resolved, and no current allegations appropriate for further resolution, OCR may close the complaint. With regard to whether the District failed to provide the Student with FAPE by failing to implement his August 2013 IEP and subsequent amendments IEPs, specifically by failing to provide the Student with 30 minutes of group Specialized Academic Instruction, OCR found that the Complainant filed the same complaint regarding this allegation with the District in February XX, 2014. The Complainant then appealed to the CDE on October X, 2014 after receiving the District's determination. As a result of the CDE appeal filed by the Complainant during OCR's investigation, the CDE determined that the District

failed to implement the Student's IEP and required corrective action of five hours of compensatory math based SAI and staff training for IEP implementation.

CDE obtained documentation from the District that confirmed that the corrective actions were implemented and provided OCR with the logs created by the District showing the dates upon which the Student received services and closed the matter as resolved on November XX, 2015. For these reasons, OCR is administratively closing this allegation pursuant to section 110(e) of the CPM.

## **Conclusion**

The enclosed Resolution Agreement (Agreement) is aligned with the violations found and concerns identified during the course of the investigation and includes:

- The development and implementation of written guidelines for District staff outlining procedures for providing oral interpretation and written translation services to Limited English Proficient (LEP) parents/guardians throughout the Section 504/special education processes.
- A needs assessment to ensure adequate staff resources are available to for interpretation and translation of IEPs, Section 504 plans, and assessment reports that conforms to the timelines included in the guidelines.
- Revision of the LEP Parent Communication Plan for parents of students with disabilities who require written translation and/or oral interpretation.
- Training on interpretation of special education and medical terminology for school site administrators and staff responsible for interpreting at IEP team meetings.
- Assignment of a District bilingual point person for the Complainant to speak with if she needs oral and/or written translation services.

When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the agreement until the District is in compliance with the statutes and regulations, which were at issue in this case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy

and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to thank the District administrators and staff for their cooperation in resolving this case. If you have any questions about this letter, please call Nefertiti Sadat, Civil Rights Investigator, at (415) 486-5550 or by email at: [nefertiti.sadat@ed.gov](mailto:nefertiti.sadat@ed.gov) or Michael Chang, Civil Rights Attorney, at (415) 486-5388 or by email at: [michael.chang@ed.gov](mailto:michael.chang@ed.gov).

Sincerely,

/s/

Mary Beth McLeod  
Team Leader

Enclosure

cc: Yonit Kovnator, Esq.  
Fagen, Friedman & Fulfrost (By Email Only)