



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

March 5, 2018

**Via E-mail Only**

Superintendent Frank Hackett  
Braintree Public Schools  
348 Pond Street  
Braintree MA, 02184  
[fhackett@braintreema.gov](mailto:fhackett@braintreema.gov)

Re: Complaint No. 01-16-1228  
Braintree Public Schools

Dear Superintendent Hackett:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Braintree Public Schools (District). Specifically, the Complainants alleged that the District discriminated against students with disabilities whose parents are limited English proficient (LEP), by failing to provide timely and accurately translated general education and special education-related documents and notices into the parents' native languages, and failing to provide qualified interpreters at special education-related meetings (Allegation 1). The Complainants also alleged that the District failed to provide translated special education evaluations from their child's (the Student) three year re-evaluation Individualized Education Program (IEP) meeting held on XXXXX (Allegation 2).

As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 C.F.R. Part 100 (Title VI), which prohibit discrimination on the basis of race, color, and national origin in programs and activities receiving financial assistance from the U.S. Department of Education. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 (Title II). Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the U.S. Department of Education and is a public entity

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

operating an elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI, Section 504 and Title II.

### **Legal Standards**

#### *Title VI (Allegation 1)*

The Title VI regulation, at 34 C.F.R. § 100.3(a) and (b), provides that a school district may not exclude persons from participation in its programs, deny them any service or the benefits of its programs, or subject them to different treatment on the basis of race, color, or national origin.

The Departmental Policy Memorandum issued on May 25, 1970, entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin” (the May 1970 memorandum), 35 Fed. Reg. 11,595, clarifies OCR policy under Title VI concerning the responsibility of schools to provide equal educational opportunity to LEP national origin minority group students. The May 1970 memorandum states that school districts must adequately notify LEP 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.

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court determined that where the inability to speak and understand the English language excludes national origin minority group students from effective participation in educational programs, districts must take affirmative steps to ensure that such English learner students (EL students) can meaningfully participate in the district’s educational programs and services in order to comply with Title VI. The Court did not directly address LEP parents. However the Court noted that the regulations specify that recipients may not “provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program” nor may recipients “restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.” 414 U.S. at 567 *citing* 34 C.F.R. Sections 100.3(b)(i)(ii) and (IV). These regulations repeatedly reference a recipient’s obligations related to “individuals.” This broad authority, endorsed by *Lau*, can include parents as well as students. OCR has generally considered the Court’s affirmation in *Lau* of OCR’s 1970 policy memorandum to provide authority for OCR policy regarding LEP parents as well as LEP students.

Title VI and the May 1970 Memorandum require recipients to select a sound educational theory for their English learner programming and to use practices, resources, and personnel in a manner reasonably calculated to effectively implement that educational theory. Districts are expected to ensure their educational program produces results indicating that the students’ language barriers are being overcome in a reasonable period of time, and to modify programs that are not successful. The May 1970 Memorandum outlines four “major areas of concern” with regard to Title VI compliance:

1. Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational

program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to those students.

2. School districts must not assign national origin-minority group students to [special education] classes on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.
3. Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.
4. School districts have the responsibility to adequately notify national origin minority group parents of school activities which are called to the attention of other parents. Such notice, in order to be adequate, may have to be provided in a language other than English.

In addition to prohibiting discrimination against students, Title VI's prohibition on national origin discrimination also requires districts to take "affirmative steps" to address language barriers so that EL students can meaningfully participate in public schools' educational programs and services. See *Lau*, 414 U.S. at 566-67; see also 34 C.F.R. § 100.3(b)(1). These affirmative steps include ensuring that LEP parents/guardians have meaningful access to district- and school-related information. Districts have an obligation to ensure meaningful communication with LEP parents/guardians in a language they can understand and to adequately notify LEP parents/guardians of information about any program, service, or activity of a district that is called to the attention of non-LEP parents/guardians. At the school and district levels, this essential information includes special education-related documents, notices to parents/guardians, and qualified interpreters at special education-related meetings, among other items.

Districts also must develop and implement a process for determining whether parents/guardians are LEP and what their language needs are. The process should be designed to identify all LEP parents/guardians, including parents/guardians of students who are proficient in English and parents/guardians whose primary language is not common in the district. For example, a district may use a student registration form, such as a home language survey, to inquire whether a parent/guardian requires oral and/or written communication in a language other than English. The school's initial inquiry should, of course, be translated into languages that are common in the school and surrounding community so that the inquiry is designed to reach parents/guardians in a language they are likely to understand. For LEP parents/guardians who speak languages that are less common at a particular school, the school may use a cover page explaining in those languages how a parent/guardian may receive oral interpretation of the form and should offer interpreters to ensure parents/guardians accurately report their language communication needs on the form. Schools may also use other processes reasonably calculated to identify LEP parents/guardians, and should identify the language needs of LEP

parents/guardians whenever those needs become apparent. It is important for schools to take parents/guardians at their word about their communication needs if they request language assistance and to keep in mind that parents/guardians can be LEP even if their child is proficient in English.

Finally, districts must provide language assistance to LEP parents/guardians effectively with appropriate, competent staff, or appropriate and competent outside resources. It is not sufficient for the staff merely to be bilingual. For example, some bilingual staff and community volunteers may be able to communicate directly with LEP parents/guardians in a different language, but not be competent to interpret in and out of English (e.g., consecutive or simultaneous interpreting), or to translate documents. 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. In addition, districts should ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

Districts may violate these Title VI obligations if the districts rely on students, siblings, friends, or untrained school staff to translate or interpret for parents/guardians; fail to provide translation or an interpreter at IEP meetings, parent-teacher conferences, enrollment or career fairs, or disciplinary proceedings; fail to provide information notifying LEP parents/guardians about a school's programs, services, and activities in a language the parents/guardians can understand; or fail to identify LEP parents/guardians.

#### *Section 504 (Allegation 2)*

The Section 504 implementing regulation at 34 C.F.R. § 104.36 provides that a “recipient that operates an elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of [disability], need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.”

#### **Background**

The complaint was filed by the Complainants on behalf of themselves and their child (Student) who attends XXXXX in the District. The Student has an Individualized Education Program (IEP) due to a disability and was found eligible for special education services. The Complainants are LEP and their primary language is XXXXX. One Complainant also is fluent in XXXXX. The Complainants state that they have difficulties understanding, reading, writing, and speaking English.

In their complaint, the Complainants stated that they were provided an interpreter at monthly meetings with the Student's teacher, therapists, and at IEP meetings but never with District staff (teacher, school nurse, or therapist) when they needed to communicate with District staff outside

of a meeting setting with regard to the Student's needs and progress. In addition, they note that a copy of the IEP from the XXXXX IEP meeting translated into XXXXX was sent to the Complainants on XXXXX, almost three months after the IEP meeting. The Complainants were never provided with a translated three-year re-evaluation and assessment of the Student which provided the basis for the determinations in the XXXXX IEP meeting.

The District provided data indicating that there are 39 languages other than English spoken by families in the District. During the 2015-2016 school year, the District had approximately 24 families of students with disabilities requiring either interpretation, translation, or both.

### **Preliminary Investigation**

During the investigation, OCR reviewed and analyzed documents provided by the Complainant and the District, including but not limited to: the District's description of how it provides translation/interpretation services to national origin minority group parents/guardians who are LEP; the District's explanation of how it ensures translators and interpreters hired are qualified and fluent in the languages in which they are translating and interpreting; data regarding all parents/guardians of students with disabilities in XXXXX who were identified as needing to be assessed for English language proficiency; information regarding whether and how the District determined that such parents needed or did not need interpreter services; evidence demonstrating whether interpreter/translation services were provided at IEP team meetings and whether accommodation plans were translated; copies of notices that have been sent to parents/guardians of students with disabilities who are LEP in the District in the past three years; and information regarding the translation of documents for the Student's team meeting on XXXXX. In addition, OCR interviewed the Director of English Learner Education (ELE) for the District.

The District utilizes the state's home language survey to identify LEP parents/guardians at the time of registration. If the District learns that a parent/guardian speaks a language other than English, the building administrator and/or registration staff will contact the ELE teacher in the building. Each school in the District has one ELE teacher available with the exception of two elementary schools that each has 1.5 ELE teachers. District staff utilizes contracted telephone interpretation services available to the District staff to communicate with LEP parents/guardians.

If a parent/guardian selects "No" on the home language survey but later requests interpretation or translation services, District staff must put the request in writing and submit it to authorized staff – either in the District's main office or the ELL teacher in the school – who updates the student management system to reflect the language needs of the parent/guardian. District staff can also have the parent/guardian complete a new home language survey that accurately reflects the parent/guardian's language needs.

During her interview, the ELE Director stated that she was not aware of any delay in changing the home language survey to reflect the parent/guardian's language needs after a parent/guardian requested translation/interpretation. However, the data the District provided does raise concerns about identification of LEP parents/guardians and timely effective communication. Specifically, it indicates that two families, including that of the Complainants, indicated "No" on the home language survey and later received interpretation and translation services from the District on a

number of occasions, but the home language survey was not changed. Although both families did receive interpretation services at IEP meetings and translation of some documents, this data raises concerns that the student management system on which the District's staff relies to identify and provide language services to LEP parents/guardians is not being accurately updated. This failure may require parents/guardians to have to continually request interpretation/translation services, which may cause delays in effective parental communication and meaningful participation.

The District contracts with outside agencies to meet its interpretation/translation needs. Data received from the District and information obtained from the interview with the District's ELE Director demonstrate that the District relies on translated special education forms that are made available through the state's website. The ELE Director offered that the Section 504 Coordinator would have more information regarding translated documents provided to LEP parents/guardians.<sup>1</sup>

In response to OCR's request for the policies governing the District's provision of interpretation and translation services, the District, instead of providing a District policy/procedure, represented to OCR that the District followed the Massachusetts Department of Elementary and Secondary Education Guidance on Identification, Assessment, Placement, and Reclassification of English Language Learners.

OCR requested a description or copies of general notices and/or communications that were sent to parents/guardians of students with disabilities who are LEP during the last three school years. The District provided various notices and letters that were translated at various schools in the District. There were not consistent and/or standard types of forms that were translated at all schools. Some of the notices were translated by Google Translate. The documents submitted raise concerns that the District has not identified or standardized the translation of essential forms necessary for effective communication with LEP parents/guardians and has not ensured that the quality of translations provided are effective and accurate.

In addition, data provided regarding the Student raises concerns that some but not all essential documents were translated. The Report of Neuropsychological Evaluation & Educational Consultation was only provided in English to OCR despite a request for translated documents. There is also no documentation in the data provided by the District demonstrating that the Complainant was provided a notice of procedural safeguards in English or in the Complainant's primary language, as the Notice of Proposed Evaluation and IEP/Amendment dated X does not indicate that "Parent's Notice of Procedural Safeguards" was provided.

Since the filing of this complaint, the District has made efforts to improve services to LEP parents/guardians. The District has worked to centralize the process for interpretation/translation services by beginning the development of District policies/procedures to provide translation/interpretation services to national origin minority group parents/guardians who are LEP. The District conducted professional development workshops on providing interpretation and translation services to LEP families for all guidance counselors serving students in grades 6-12 as well as for all school psychologists serving students in pre-Kindergarten through grade 12.

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<sup>1</sup> The District requested a 302 resolution prior to OCR interviewing the Section 504 Coordinator.

Before OCR could conclude its investigation and make a compliance determination, the District expressed interest in resolving the complaint allegations through a resolution agreement pursuant to Section 302 of OCR's *Case Processing Manual*. While OCR has identified concerns, in order to reach a determination OCR would need to conduct a series of additional interviews, including with the District's Section 504 Coordinator and other District staff (i.e., student teachers, nurses, etc.), as well as with LEP parents/guardians of students with disabilities. In addition, OCR would need to perform a case file review.

### **Conclusion**

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in these complaints. The terms of the Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the District's implementation of the Agreement and continue to do so until it has determined that the District has complied with the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

If you have any questions, you may contact Civil Rights Attorney Carla P. Moniz at (617) 289-0047 or by e-mail at [Carla.Moniz@ed.gov](mailto:Carla.Moniz@ed.gov).

Sincerely,

Meena Morey Chandra *w/p AMM*  
Acting Regional Director

Enclosure

cc: Paige Tobin, [ptobin@mlmlawfirm.com](mailto:ptobin@mlmlawfirm.com)