



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

8TH FLOOR, 5 POST OFFICE SQUARE
BOSTON, MA 02109-3921

REGION I

CONNECTICUT
MAINE
MASSACHUSETTS
NEW HAMPSHIRE
RHODE ISLAND
VERMONT

May 8, 2023

Meg O'Leary
Head of School

By email: XXXXXXXXXXXXXXXXXXXXXXXX

Re: Complaint No. 01-23-1082
The Learning Community Public Charter School

Dear Meg O'Leary:

This letter advises you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of The Learning Community Public Charter School (School). OCR opened an investigation after receiving a complaint alleging that the School discriminated against parents and community members on the basis of national origin. As explained further below, before OCR completed its investigation, the School expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance from the U.S. Department of Education. Because the School receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it pursuant to Title VI.

OCR investigated the following legal issue:

Whether the School subjected parents to discrimination by failing to communicate with them in a way that allows them to meaningfully participate in the School's programs, in violation of 34 C.F.R. §§ 100.3(a) and (b)(1).

Legal Standard

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b)(i)-(ii) provides that a recipient may not, on the basis of 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.

The Departmental Policy Memorandum issued on May 25, 1970 provides that recipients must adequately notify Limited English Proficient (LEP) national origin minority group parents of

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

www.ed.gov

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. This policy concerning the need for effective communication with parents who do not speak English fluently has consistently been upheld by the courts and reiterated in subsequent OCR policy guidance.

Recipients have the obligation to ensure that LEP parents/guardians have meaningful access to school-related information in a language they can understand and to adequately notify LEP parents/guardians of information about any program, service, or activity of a recipient that is called to the attention of non-LEP parents/guardians. A recipient's obligation to ensure meaningful communication with LEP parents requires it to provide LEP parents/guardians with oral interpretation and/or written translation of essential information into their primary language where necessary to ensure that they can meaningfully participate in their child's education. Essential information includes, but is not limited to, special education related documents, notices to parent/guardians, student-parent handbooks, documents concerning enrollment or registration, report cards and other academic progress reports, parent-teacher conferences, and qualified interpreters at special education related meetings.

Recipients must also provide free 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. Recipients 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, recipients 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.

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

Findings of Fact

The Complainant XXXXXXXXXXXXXXXXXXXX informed OCR that the School requires XXXXXXXXXXXXXXXXXXXX bilingual staff members to interpret and translate for LEP parents even though she and most of the other staff members are untrained and uncertified. She stated that they have been required to interpret at welcome meetings and parent-teacher conferences. According to the Complainant, the School also pays individuals who are not staff at the School, some of whom are not certified, to interpret and translate.

In its narrative response, the School explained that "typically" the School's XXXXXXXXXXXX XXXX is responsible for identifying the language needs of each family, using the information

maintained in the School's Student Information System.¹ XXXXXXXXXXXXXXXXXXXX is bilingual in English and XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The School noted that the XX XX XXX.

According to the School's XXXXXXXXXXXXXXXXXXXX approximately 271 of the 576 students at the School receive English Learner (EL) services. Spanish is the primary language of the EL students and their parents, with approximately eleven other students being speakers of XX.

Oral Interpretation

The XXXXXXXXXXXX coordinates the assignment of interpreters for parent-teacher conferences and other meetings, including monthly “Family Café” events. The School provided a redacted classroom list prepared by the XXXXXXXXXXXX of certain teachers’ fall 2022 parent-teacher conferences; the list notes whether an interpreter² will be provided and the name of the assigned interpreter, and indicates the language if it is not Spanish.

The XXXXXXXXXXXXXXXX uses two sources in assigning interpreters. The first source is a list of staff members whom the XXXXXXXXXXXXXXXX “fully bilingual.” The XXXXXXXXXXXXXXXX assesses their qualifications by reviewing the employee’s file after they start working at the School, and through her own assessment of the employee’s language skills. The staff interpreters are full-time School employees, including members of the XXXXXXXXXXXXXXXX teams. According to the XXXXXXXXXXXXXXXX, approximately two of the fifteen staff members used as interpreters have certification in interpretation or translation services, though she did not know what certification any had.

The second source is a list of external interpreters whom the XXXXXXXXXXXXXXXX contacts to ensure that staff members do not get “burnt out.” Of the seven individuals on this list, three either have jobs as interpreters or are certified. The School provided information showing payments to additional external individuals for interpretation services between August 2021 and November 2022.

For informal communications, families can request interpretation assistance directly from the XXXXXXXXXXXXXXX. The XXXXXXXXXXXXXXX will interpret herself if the parent speaks XXXXXXX, and will refer the caller to a staff member if the parent speaks XXXXXXX. If the XXXXXXX-speaking parent calls with a question, the XXXXXXXXXXXXXXX will direct that communication go through the XXXXXXXXXXXXXXX.

¹ The School represented that it uses the Rhode Island Department of Education Home Language Survey, along with the Emergency Contact Form and Family Contact and Proof of Address Form, to identify Limited English Proficient (LEP) parents, and that all this information is stored in the School's Student Information System.

² The lists provided use the term “translator,” but OCR assumes this term is intended here to indicate oral interpretation.

Written Translation

The XXXXXXXXXXXX described the School's process for translating written materials, including notices about School events, IEPs, and Section 504 plans. Teachers and administrators send the XXXXXXXXXXXX documents for XXXXXXXX translation. The XXXXXXXX XXXXXXXX said that many teachers use Google Translate, but whenever possible and in most cases, the XXXXXXXXXXXX does the XXXXXXXXXXXX because it is more accurate. For documents to be translated into XXXXXXXXXXXX, the XXXXXXXXXXXX enlists the help of staff who speak the language. Documents are not translated into XXXXXXXX for the XXXXXXXX speaking parent, because the XXXXXXXXXXXX.

Analysis

Based on the evidence obtained to date, OCR has a preliminary concern about the School's communication with LEP parents/guardians in a language they can understand regarding essential information about their children's education program. The evidence provided by the School shows that it uses untrained staff members and external individuals to provide most of its translation and interpretation services to LEP parents/guardians. These staff and external individuals may be able to communicate with LEP parents/guardians in a language they can understand, but most of the individuals used by the School are not trained or certified as interpreters or translators. Among other skills, interpreters and translators used by schools must be trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality. In addition, there is some evidence that the School is not providing any written translations of documents, including those containing essential information, to parents/guardians who speak less common languages in the community, including XXXXXXXX. In sum, OCR is concerned, based on the evidence obtained to date, that the School may be inappropriately relying on untrained interpreters and translators to communicate with LEP parents at meetings and at school events, and in written documentation, as well as not providing essential information to all LEP parents.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the School expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the School resulted in the School signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School'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 a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the School 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.

Sincerely,

Michelle Kalka
Compliance Team Leader

Enclosure

cc: Matthew R. Plain
mpain@bglaw.com