



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

January 15, 2020

Richard A. Carranza
Chancellor
New York City Department of Education
Tweed Courthouse
52 Chambers Street
New York, New York 10007

Re: Case No. 02-12-1269
New York City Department of Education

Dear Chancellor Carranza:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the New York City Department of Education (NYCDOE). The Complainants alleged that the NYCDOE discriminates on the bases of disability and national origin, against students with disabilities whose parents are limited English proficient (LEP), by failing to translate special education-related documents and notices into the parents' native languages (Allegation 1); and, provide neutral, qualified translators or interpreters at special education-related meetings and due process hearings (Allegation 2).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 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 programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the Department. OCR is further responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The NYCDOE is a recipient of financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI, Section 504 and the ADA.

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a) and (b)(1), provides that a recipient of federal financial assistance may not, directly or through contractual or other arrangements, on

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

the ground of race, color or national origin, exclude individuals from participating in its programs; deny them the benefits of its programs; or provide any service or benefit that is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department issued a memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin” (35 Fed. Reg. 11595). The memorandum (the May 25th memorandum) clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students. 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. OCR also analyzes this issue consistent with the U.S. Department of Justice’s (DOJ) “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (67 Fed. Reg. 41455, June 18, 2002). The failure to provide written translations of certain types of documents is not a *per se* violation of Title VI. Rather, the determination of whether the failure to translate certain documents denies a LEP parent meaningful access, in violation of Title VI, must be made on a case-by-case basis. In determining whether meaningful access would be assisted by a written translation, districts or schools should first consider the kind of information that is included in the document and whether it is important for LEP parents to have this information in writing. DOJ has stated that the more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4)(ii), states that a recipient may not utilize criteria or methods of administration that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s program with respect to disabled persons. The regulation implementing the ADA contains a similar provision at 28 C.F.R. 35.130(b)(3)(ii).

In its investigation, OCR reviewed information that the Complainants and the NYCDOE submitted. OCR also interviewed NYCDOE district level administrators responsible for special education, and translation and interpretation; school level administrators; and, several LEP parents.

Background:

The NYCDOE is the largest public school system in the United States; it consists of approximately 1700 schools and serves nearly 1.1 million students annually. During school year 2012-2013, when OCR initiated this investigation, over 40% of students enrolled in NYCDOE schools reported a home language other than English. The primary languages reported were as follows:

Language	Number of Students Reporting as Home Language (and percentage of student body)
English	595,519 (59.1%)
Spanish	241,416 (24.0%)
Chinese	56,046 (5.6%)
Bengali	19,068 (1.9%)
Russian	15,159 (1.5%)
Arabic	11,719 (1.2%)
Urdu	9,176 (0.9%)
Haitian Creole	6,290 (0.6%)
Korean	5,385 (0.5%)
French	4,227 (0.4%)
Other ¹	43,079 (4.3%)
Total	1,007,084 (100%)

The Complainants identified specific parents who could provide information to OCR to support the allegations in this complaint. These parents alleged that they had children enrolled in the following 18 NYCDOE schools:² P.S. 36X (Bronx);³ P.S. 112X (Bronx);⁴ P.S. 186X at Walter J. Damrosch School (Bronx); P.S. 723X at P.S. 338X (Bronx); P.S. 374X Knowledge and Power Preparatory Academy (KAPPA) (Bronx); P.S. 325X Urban Science Academy (Bronx); P.S. 4K at P.S. 81K (Brooklyn); P.S. 230K (Brooklyn);⁵ P.S. 505K Franklin D. Roosevelt High School (Brooklyn); P.S. 220K John J. Pershing Junior High School (Brooklyn); P.S. 620K William E. Grady Career & Technical High School (Brooklyn); P.S. 94M at P.S. 015M (Manhattan);⁶ P.S. 169M at RFK (Manhattan); P.S. 224Q at P.S. 186Q (Queens); P.S. 225Q at J.H.S. 168 (Queens);⁷ P.S. 225Q at P.S. 7 (Queens); P.S. 752 at Gateway (Queens); and, P.S. 450 Long Island City High School (Queens).⁸ An additional parent the Complainants identified had children attending two private, out-of-District placements; one in Queens and one in Westchester.⁹

¹ 43,079 students reported speaking one of approximately 150 other languages at home.

² The NYCDOE advised OCR that some of the students the Complainants identified did not attend the identified school during school years 2010-2011 and 2011-2012.

³ The student the Complainants identified as attending P.S. 36X was removed from that school and placed by his parents at a private school during school year 2010-2011, after allegedly never receiving translated documents related to the student’s special education services at PS 36X during school year 2010-2011.

⁴ The student the Complainants identified as attending P.S. 112 was placed by the NYCDOE in a private school beginning school year 2011-2012.

⁵ The student the Complainants identified as attending P.S. 230 was placed by the NYCDOE in a District 75 school beginning in school year 2010-2011.

⁶ The student the Complainants identified as attending P.S. 094M was removed from that school and placed by his parent in a private specialized high school in fall 2009, because the parent believed that the student’s needs had not been met due to language access barriers.

⁷ The NYCDOE reported that P.S. 255Q at J.H.S. 168 and P.S. 225 at P.S. 7 are two different sites but are both part of the same school. OCR listed the two sites separately.

⁸ OCR determined that one of the two students the Complainants identified as attending Long Island City High School did not attend that school; rather, he was placed at a private school in 2005.

⁹ The Complainants alleged that the NYCDOE provided, to the parent, notices and documents regarding these two students in English only.

The Complainants provided affidavits from these parents, and OCR interviewed parents, with appropriate interpretation services, to clarify their experiences with language assistance in the NYCDOE. Parents of students at the 18 NYCDOE schools referenced above attested to being denied documents translated into their home language or interpretation services during meetings related to the special education evaluation and referral process.

The NYCDOE's Language Access Plan:

OCR determined that the NYCDOE has a written plan for providing language assistance (the Language Access Plan), which comports with NYCDOE's Chancellor's Regulation A-663 (the Chancellor's Regulation). The Chancellor's Regulation, in pertinent part, requires the NYCDOE to do the following:

- Determine the primary language of each student's parent within 30 days of the student's enrollment;
- Include in each school's comprehensive educational plan, among other things, an assessment of the school's language assistance needs, including document translation and interpretation services; a description of how the school will meet these needs; and, the budgetary and staffing resources it is devoting to fulfill the needs;
- Translate documents produced by the NYCDOE and its schools, including both general documents and student specific documents containing critical information regarding a child's education, into nine "covered languages";¹⁰
- Provide alternatives to translation of documents when the NYCDOE is unable to translate because the requested translation is not for a covered language;
- Provide interpretation services to the maximum extent practicable to parents whose primary language is a covered language and who request such services in order to communicate with school staff regarding critical information about their child's education, by telephone or in person;¹¹
- Notify parents of the availability of language access services;¹²
- Provide a mechanism for parents to request language assistance;
- Provide training for parent coordinators and other key school-based personnel on the language access requirements; and

¹⁰ The Chancellor's Regulation defines "covered languages" as the nine most common primary languages other than English spoken by persons living in New York City, as identified by the NYCDOE. These include Arabic; Bengali; Chinese; French; Haitian Creole; Korean; Russian; Spanish; and, Urdu. The covered languages and English account for over 95% of NYCDOE student households. All parents identified in connection with this complaint speak one of the covered languages.

¹¹ The Language Access Plan states that interpretation may also be available in non-covered languages through a vendor.

¹² Specifically, the NYCDOE must: (1) provide each parent whose language is a covered language and who requires language assistance services with a copy of the Bill of Parent Rights and Responsibilities, translated as appropriate; (2) post at each school and administrative office a sign in each of the covered languages at or near the primary entrance setting forth the availability of language assistance services; (3) provide procedures for parents in need of language assistance to reach the school's administrative offices; (4) ensure that each school at which parents of more than ten percent of the students speak a language that is neither English nor a covered language obtains a translation into such language of the school's signage and required forms, and post and provide these signs/forms; and, (5) post on its website information in each of the covered languages concerning the rights of parents to translation and interpretation services.

- Maintain data on and report all language access services provided, including: the number of documents translated; the number of meetings at which interpretation services were provided; the annual budget for language access services; the number of NYCDOE employees who provide language assistance services; and, the number of times language assistance services were provided by telephone and the language in which such services are provided.

The NYCDOE publishes its Language Access Plan on its website.¹³ During school year 2019-2020, the NYCDOE also published information for parents on its website about language access services,¹⁴ which contained links to key documents, including the Parent’s Guide to Language Access; and, “I Speak” cards.¹⁵

Record Maintenance:

The NYCDOE’s written plan for language assistance, as described in its Language Access Plan and the Chancellor’s Regulation, requires that the NYCDOE electronically maintain information regarding a parent’s primary language in NYCDOE’s Automate the Schools (“ATS”) database and on emergency “blue cards.” School personnel are to identify which parents are LEP by accessing the NYCDOE’s Home Language Identification Survey (“HLIS”); and, by reviewing the student’s emergency blue card.

The NYCDOE informed OCR that once parents with disabled children identify their preferred language, that information is also downloaded from the ATS database into the Special Education Student Information System (SEIS).¹⁶ The NYCDOE generates all Individualized Education Programs (IEPs) for disabled students through SEIS and relies on the entry in SEIS to reflect the parent’s preferred language.

Translation of Documents:

The Chancellor’s Regulation provides that a central Translation and Interpretation Unit (the “T&I Unit”) is responsible for translation of general school and NYCDOE documents. Schools, in consultation with the T&I Unit, are responsible for translation of student-specific documents. The NYCDOE’s T&I Unit employs more than 40 full time staff members, of whom approximately 30 are full time translators handling the nine covered languages within the District. The T&I Unit includes two teams. One of the teams handles requests from the NYCDOE’s central offices, which generally consist of requests for form documents that are translated into all nine covered languages and disseminated widely. The other team handles requests from schools, such as requests to translate principal’s letters, calendars, and newsletters into specific languages. If a school or administrative office requests translation of a non-student-specific document into a non-covered

¹³ http://www.nyc.gov/html/ops/downloads/pdf/lap/lap_doe.pdf (last visited December 31, 2019).

¹⁴ <https://www.schools.nyc.gov/school-life/school-environment/in-your-language> (last visited December 31, 2019).

¹⁵ “I Speak” cards allow LEP parents to identify their preferred language in order to receive appropriate interpretation services.

¹⁶ Launched in 2011, SEIS is the online system in which the NYCDOE maintains information for all disabled students with IEPs.

language, the T&I Unit contacts a vendor. The T&I Unit keeps records of requests it receives for translation services.

During school year 2018-2019, the NYCDOE initiated a pilot program in the T&I Unit for translation of IEPs by parental request (the pilot program) in two community school districts (Districts 9 and 24) and the citywide district for students with significant special education needs (District 75). The pilot program continued during school year 2019-2020. In the pilot program, upon receipt of a request from a LEP parent, the school submits a request online for a translation of an IEP, which is received by the T&I Unit. There is also a webpage describing the pilot program¹⁷ and providing a link to the translation request form for schools.

Interpretation Services:

Schools are responsible for obtaining interpretation services for meetings with parents regarding students' special education programs and related aids and services. For interpretation services, the NYCDOE's schools employ their bilingual staff members and contracted vendors such as "the Big Word" and "Language Line."

For interpretation over the phone, a school or administrative office calls the T&I Unit, which connects the school or administrative office to a vendor such as Language Line. For on-site interpretation services, the T&I Unit or school or administrative office contacts a vendor such as The Big Word. The T&I Unit has a phone hotline and email address for language access services or complaints.¹⁸ The T&I Unit keeps records of requests it receives for interpretation services.

Notice to Parents and Mechanism to Request Services:

The Chancellor's Regulation requires that the NYCDOE notify parents of the availability of language access services and provide a mechanism for parents to request language assistance. NYCDOE's website has a multilingual flyer for parents describing their right to language access services; a multilingual welcome poster; and, a language card for school safety agents informing them how to contact the T&I Unit in order to obtain interpretation services.

Additionally, as part of the pilot program, the T&I Unit, Language Access Coordinators (LACs) and the NYCDOE sent information to principals of schools in the three pilot districts regarding how to obtain translations. Notices and flyers translated into the nine covered languages that included information for parents on how to request a translation were also posted in all schools covered by the pilot, and attached to IEP meeting notice letters. The NYCDOE also published a webpage informing parents about the availability of translated IEPs.¹⁹

¹⁷ See <https://www.schools.nyc.gov/school-life/school-environment/in-your-language/iep-translation-pilot-program> and <https://www.schools.nyc.gov/IEPhello> (last visited December 31, 2019).

¹⁸ There is no single point of contact at the T&I Unit for handling issues related to students with disabilities.

¹⁹ See <https://www.schools.nyc.gov/IEPhello> (last visited December 31, 2019).

Training:

The Chancellor’s Regulation requires that the NYCDOE provide training for parent coordinators and other key school-based personnel on language access requirements. OCR determined that prior to school year 2013-2014, the T&I Unit provided training to principals at the commencement of their appointments; and, offered such training to parent coordinators during winter and spring breaks. The T&I Unit augmented the training of school-based LACs and other key staff at trainings that commenced during school year 2013-2014. Prior to school year 2016-2017, the NYCDOE hired nine full-time Field LACs, a new position created to ensure that school-based LACs are appropriately trained, and that schools provide LEP parents with full access to translation and interpretation services available to them.

Allegation 1: Document Translation

With respect to Allegation 1, the Complainants alleged that the NYCDOE discriminates on the bases of disability and national origin, against students with disabilities with LEP parents, by failing to translate special education-related documents and notices into the parents’ native languages. Parents with children at the 18 named schools described receiving all written notices and communications from the NYCDOE or the student’s school in English, notwithstanding that the parents had indicated that they did not speak, understand or read English. Parents also advised OCR that important student-specific documents, such as IEPs, Related Service Authorization(s) (RSAs),²⁰ Nickerson letters,²¹ and notices of meetings or documents regarding the student’s special education placement, regular education, behavior, or discipline were uniformly sent to them in English, and not translated. Parents also described receiving specific written communication and letters from social workers, therapists, and other staff regarding student behavior that were not translated or made available to the parent in their language.

The NYCDOE denied that it or any of its schools, including the schools the Complainants identified, failed to provide translation of any general, non-student specific documents related to students’ participation in the special education program into either covered or non-covered languages. The NYCDOE notified OCR that 14 of the 18 schools the Complainants identified made requests, through the T&I Unit, for translation of such documents into covered languages; and, that the requested translated documents were provided.

OCR determined that during school years 2009-2010, 2010-2011, 2011-2012, and 2012-2013, the 12 schools listed below submitted the following numbers of requests to the T&I Unit for translations of non-student specific documents. OCR determined that there were no records of requests for translation of any general, non-student specific documents from the remaining 6 schools the Complainants identified.

²⁰ An RSA is a voucher provided by the NYCDOE to parents of students with disabilities whose IEPs mandate related services (e.g., occupational or physical therapy), but for whom the NYCDOE has been unable to secure the related services at the students’ schools. The RSA allows a parent to obtain the services from an outside service provider.

²¹ If the NYCDOE fails to find an appropriate public school placement for a student with a disability within 65 school days from the time it receives a parent’s consent to evaluate or a referral for review, the CSE gives the parent a form known as a “Nickerson letter” or a “P-1 letter,” which authorizes the parent to enroll the student in a state-approved private school at public expense by a certain date.

School	Number of Requests	Language(s)
X186	4	Spanish, Russian, Urdu, Bengali
X723	8	Spanish
X374	4	Spanish, Arabic, Bengali
X325	3	Spanish
K004	2	Bengali, Chinese, Haitian/Creole, Korean, Russian, Spanish, Arabic, Urdu
K230	19	Arabic, Bengali, Chinese, Russian, Spanish, Chinese, Urdu
K505	42	Arabic, Bengali, Chinese, Haitian/Creole, Korean, Russian, Spanish, Urdu
K220	16	Arabic, Bengali, Chinese, Spanish, Urdu, Korean, Haitian/Creole
K620	1	Arabic, Bengali, Chinese, Haitian/Creole, Korean, Russian, Spanish, Urdu
M169	1	Spanish
Q224	12	Arabic, Bengali, Chinese, Haitian/Creole, Korean, Russian, Spanish, Urdu
Q450	15	Arabic, Bengali, Chinese, Spanish, Urdu, Haitian/Creole, Korean

OCR determined that since becoming the NYCDOE’s contracted vendor in 2012, through school year 2015-2016, the Big Word received 43 requests for translation of student-specific IEPs from all NYCDOE schools. OCR determined that none of these requests were made by the schools identified by the Complainants. OCR reviewed the IEPs of the students the Complainants named and determined that the IEPs did not consistently reflect the preferred languages that the parents of the students identified to the NYCDOE.

Allegation 2: Interpretation Services

With respect to Allegation 2, the Complainants alleged that the NYCDOE discriminates on the bases of disability and national origin, against students with disabilities with LEP parents, by failing to provide neutral, qualified translators or interpreters at special education-related meetings and due process hearings. The Complainants asserted that these interpreters were not sufficiently fluent in both languages; lacked familiarity with special education terminology; summarized meetings rather than providing a complete interpretation; and, pressured parents to accept the school’s placement recommendation. The Complainants alleged that, as a result, LEP parents resorted to bringing agency workers, acquaintances, and family members to interpret for them.

Parents OCR interviewed stated that interpreters were not provided at meetings to discuss students that were held with teachers, special education professionals, service providers, and other school staff. In some cases, parents described locating members of the community or relatives to translate or interpret at meetings. Parents described receiving oral communications from school staff such as teachers, service providers, and nurses, in which no attempt to translate or interpret was made, although the student’s education or health was being discussed.

The NYCDOE informed OCR that the Big Word received seven requests from various NYCDOE schools to provide interpretation services at IEP meetings during school year 2013-2014; none of these requests was made by a school the Complainants identified. OCR determined that translation and interpretation services were not provided at IEP meetings at schools the Complainants identified, even when SESIS accurately reflected the parent's preferred language.

The NYCDOE informed OCR that from April 2012, when the NYCDOE began maintaining records of such requests, through school year 2015-2016, 4 of the 18 schools that the Complainants identified made a total of 37 requests for telephonic interpretation services from the Language Line for both covered and non-covered languages; and, that the requested services were provided in all 37 instances.²² The NYCDOE informed OCR that it had no record of any such request from the other schools the Complainants identified.

On December 20, 2019, the NYCDOE signed the enclosed agreement to resolve Allegations 1 and 2 without further investigation. OCR will monitor the implementation of the agreement.

This letter should not be interpreted to address the NYCDOE's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 NYCDOE may not harass, coerce, intimidate, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

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, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Alexander Artz, Senior Compliance Team Attorney, at (646) 428-3901, or alexander.artz@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Judy E. Nathan, Esq.

²² OCR determined that 22 of the 37 total requests came from one school.