



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

August 9, 2016

Pedro A. Rivera
Secretary of Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

RE: OCR Complaint No. 03-16-4041

Dear Secretary Rivera:

This is in further reference to the complaint filed with the Office for Civil Rights (OCR), U.S. Department of Education (the Department), against the Pennsylvania Department of Education (PDE). The complaint alleged that PDE fails to provide limited English proficient parents with sufficient translation and interpreting resources needed to file discrimination (also known as 'educator misconduct') complaints at the state level, because the complaint form and information concerning the complaint process is provided/available only in English.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) 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 Department.

As PDE receives Federal financial assistance from the Department, it is subject to Title VI and the Department's implementing regulation.

Before OCR completed its investigation, PDE expressed a willingness to voluntarily 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.

Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.3(a) and (b), provides that a recipient 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 Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Concerning a recipient’s obligations to provide effective notice to parents, 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 on issues concerning the responsibility of schools to provide equal educational opportunity to limited English proficient (LEP) national origin minority 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.

Additionally, OCR considers the issue of meaningful communication with limited-English proficient parents in a manner consistent with Executive Order 13166, *Improving Access for Persons with Limited-English Proficiency*, issued August 11, 2000 (Executive Order 13166). The U.S. Department of Justice Guidance issued on June, 18, 2002, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited-English Proficient Persons*, provides specific guidance about the method and manner (including translation and interpretation) for delivering information to limited English proficient individuals in a timely and effective manner. In addition to setting forth similar requirements, the joint Department of Justice and Department of Education’s January 7, 2015 *Dear Colleague Letter* specifically requires recipients to have a process in place to identify parents who require communication in a language other than English. It also requires that State Education Agencies (SEA’s) “provide language assistance to LEP parents effectively, with appropriate, competent staff—or appropriate and competent outside resources.”

Factual Background

xx-paragraph-xx

xx-paragraph-xx Once the completed form was received, PDE opened an investigation into the matter. That investigation is ongoing.

OCR requested and reviewed information provided by PDE in response to a preliminary data request. This information indicates that PDE does not have written policies and/or procedures for communicating with individuals who are limited English proficient (LEP) who file or would like to file an educator misconduct complaint with PDE. PDE does have resources through which language assistance can be provided. PDE does not, however, provide notice on its website of the available language assistance resources that are available nor how one may access them. In addition, a cursory review of PDE’s public website suggests that none of the information contained therein is translated or otherwise available in languages other than English, nor are there any instructions or notice as to how information can be obtained in other languages.

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a voluntary resolution agreement. PDE

signed the enclosed Resolution Agreement on August 9, 2016, the provisions of which align with the complaint allegations, the issues investigated, and are consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations. As is our standard practice, OCR will monitor PDE's implementation of the Agreement until we have determined that PDE is in compliance with Title VI with respect to the issues raised in this complaint. 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 PDE'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 PDE 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, or participates in an OCR proceeding. 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.

We appreciate PDE's cooperation in the resolution of this complaint. If you have any questions, please contact Michael Wesley, the investigator assigned to this complaint, at 215-656-6908 or by email at: Michael.Wesley@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office

Enclosure

cc: Jonathan W. Kunkel, Esq. - Governor's Office of General Counsel - PDE