



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 18, 2016

Ms. Angela West
Principal
Imagine Prep Coolidge
1290b West Vah Ki Inn Road
Coolidge, Arizona 85228

Re: Imagine Prep Coolidge
Case Number: 08-16-1216

Dear Ms. West:

On February 29, 2016, we received a complaint alleging that Imagine Prep Coolidge (the School) discriminated against the Complainant's son (the Student) on the basis of disability and against the Complainant on the basis of her national origin. Specifically, the Complainant alleges that the School refused to enroll the Student, a person with a disability, at Imagine Prep Coolidge despite enrolling XXXX who is not a person with a disability. The Complainant also alleges that the School failed to communicate with her in a language that she could understand.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities; and Title VI of the Civil Rights Act of 1964 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 that receive Federal financial assistance from the Department.

The School has signed an Agreement which, when fully implemented, will address the issues raised in the Complainant's allegation.

Discrimination on the Basis of Disability

The Complainant alleged that the School discriminated against the Student when it did not enroll her son (the Student), a person with a disability. Specifically, the Complainant alleged that the School claimed to have lost the enrollment paperwork that she submitted on XXXX, when she was told in XXXX that the School had never received such paperwork.

Legal Standard

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same

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

prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1)(i) a recipient may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school's actions were based on the individual's disability.

Background information

The Complainant is a native Spanish speaker. The Complainant told OCR that she submitted a registration/enrollment packet for her son (the Student), XXXXX, at the School's front office on XXXX. The School told OCR that the Complainant did not ever submit a registration/enrollment packet.

The School's Registrar told OCR that when a parent/guardian wishes to enroll his/her child, the parent fills out an enrollment ticket that is then given to the Registrar. The enrollment ticket includes the date the registration/enrollment packet is requested, the parent/guardian's first and last name, the student's first and last name, and the grade that the student will be entering. The Registrar explained that she reviews each packet, and if she has any concerns with a student's history of disciplinary issues or disability-related needs, she notifies the administration.

The parties disagree on whether the Complainant re-submitted a registration/enrollment packet for the Student in XXXX, after she was told that the Student was not enrolled. The School did request and receive the Student's records from his previous school, including a copy of the Student's IEP. Upon receiving the Student's IEP, the parties agree that the School's former principal asked a paraprofessional to help him interpret a call to the Complainant to discuss the Student's enrollment. The paraprofessional/interpreter and Complainant independently told OCR that during that call, the former principal told the Complainant, through the interpreter, that the School would not be able to provide the level of the support the Student required, and so while he could be enrolled at the School, he would likely attend school in another location that could provide the services he needed. The former principal further explained that the Student would most likely be placed in the local school district.

The parties agree that after the Complainant's younger son attended XXXX at the School's sister school (an elementary school located next door) and the Complainant told the younger student's teachers that she was upset the Student could not attend the School, the School's Turnaround Principal, a native Spanish speaker, called the Complainant to discuss the Student's enrollment. The Turnaround Principal explained that he wanted to call the Complainant to eliminate any possible language barrier and ensure that she understood that the Student was welcome to enroll at the School. The Complainant and Turnaround Principal both told OCR that during that call, the Turnaround Principal apologized for any confusion that may have arisen following the Complainant's call with the former principal regarding the Student's enrollment; the parties agree that the Turnaround

Principal did explain that the Student was welcome to enroll at the School. At that time, the Complainant said that given the course of events, she did not wish for the Student to enroll at the School.

The Regional Director of the charter school network the School belongs to and the Turnaround Principal independently told OCR that ideally, the Student would have been enrolled before anybody discussed an appropriate placement for him. The Regional Director also told OCR that the School understands that as a public charter school with open enrollment, it has the responsibility to serve all students, including those with disabilities.

During the investigation of this complaint, before OCR had sufficient evidence to make findings regarding compliance, the School informed OCR that it wished to resolve the Complainant's allegations. Pursuant to Section 302 of our *Case Processing Manual*, a complaint allegation may be resolved when, before the conclusion of an investigation, a recipient agrees to resolve the allegation and OCR has determined that the allegation is appropriate for resolution during the investigation. OCR has determined that this allegation is appropriate for a Section 302 Agreement and the School signed an Agreement which, when fully implemented, will resolve this allegation. OCR will monitor the implementation of the Agreement until all terms are fulfilled.

Discrimination on the Basis of National Origin

The Complainant alleged that the School discriminated against her on the basis of her national origin when it failed to communicate with her in a language that she could understand. Specifically, she alleged that she visited the School to speak with somebody regarding the Student's enrollment and the only person who was available was the former principal, who she attempted to communicate with through the use of signs, as he did not speak conversational Spanish and she could not speak conversational English.

Legal Standard

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. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which 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 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 on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students and their parents/guardians (parents).

The May 25th memorandum states that recipients 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 considers the issue of meaningful communication with LEP parents in a manner consistent with Executive Order

13166, Improving Access for Persons with Limited-English Proficiency, issued August 11, 2000. Further, OCR analyzes this issue consistent with the U.S. Department of Justice (DOJ) *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (67 Fed.Reg. 41,455, June 18, 2002). Under the DOJ Guidance, the extent of a recipient's obligation to provide language assistance to limited English proficient (LEP) individuals is determined by balancing four factors: (1) the number or proportion of LEP individuals likely to encounter the program; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the services provided by the program; and (4) the resources available to the recipient. The DOJ Guidance also clarifies recipients' obligations to deliver information to LEP individuals in a timely and effective manner.

A recipient's 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 requires a recipient 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.¹ Further, recipients 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 recipient's jurisdiction.

Recipients must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. It is not sufficient for staff merely to be bilingual. 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 and they are trained in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality. In addition, interpreters should be able to demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and be knowledgeable of any particularized vocabulary and phraseology used by the LEP person.

Background information

The Complainant indicated to OCR that she hoped that the Student could enroll in XXX grade at the School for the XXX academic year; however, the Student did not enroll in and has never attended the School. The School, which serves students in grades six through twelve, is located in Coolidge, Arizona. Of the 546 students who attended the School during the 2015-2016 school year, the School identified 26 as English Language Learners in the roster it shared with OCR. The Turnaround Principal of the School told OCR that the School has undergone a significant demographic change over the past several years, changing from being “about 10% native Spanish speaking [when it opened in 2008] to around 70% today.”

¹ On January 7, 2015, OCR and the United States Department of Justice issued a joint Dear Colleague Letter entitled “English Learner Students and Limited English Proficient Parents”, which discusses school districts' obligation to ensure meaningful communication with LEP parents in a language they can understand of information about any program, service or activity that is called to the attention of non-LEP parents. It may be found at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

In response to OCR's request for a list of staff who provide oral interpretation or written translation assistance at the School, the School shared the names of six individuals who it relies on for such assistance. The School explained that each of the individuals was qualified to provide this assistance because they are "bilingual." When OCR asked the Regional Director of the charter school network the School belongs to what "bilingual" means, she responded, "some of them might have oral and written translation abilities, some might only have one or the other. Interpretation means that they can understand and translate into another language. Some have stronger bilingual skills than others, and we understand that."

The School informed OCR that it does not use outside interpreters or professional agencies/organizations for oral interpretation or written translation assistance services because the School has staff available "to serve in that capacity at all times." OCR interviewed three of the six individuals the School identified as interpreters/translators; each interviewee indicated that they had not received any training related to interpretation or translation. OCR noted that one individual told OCR that she didn't have any certifications or training in interpretation/translation, but "I'm just fluent in Spanish," while another told OCR, "I was just born speaking Spanish." OCR also noted that one of the interpreters/translators who was interviewed appeared to have a difficult time understanding and/or answering questions that OCR asked in English, and was only able to answer OCR's last question when it was asked in Spanish.

In its narrative response to OCR's XXXX data request, the School stated that School staff and parents/guardians are made aware of the availability of translation and interpretation services by "ensur[ing] that all staff are made aware of the persons on the campus who can serve as translators and/or provide interpretation services each school year, [so] that when a parent indicates the need for such services, staff request that the parents are contacted [by a Spanish speaker]." The School's Administrative Regulation IHB-R, regarding IDEA and the identification and placement of students with disabilities, states that, "The School will take whatever action is necessary to help the parent understand the proceedings at IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English."

Finally, the School told OCR that documents available to families in Spanish include forms in the student registration/enrollment packet, free and reduced lunch packet, family surveys, re-enrollment forms for continuing students, and various communications throughout the school year.

During the investigation of this complaint, before OCR had sufficient evidence to make findings, the School informed OCR that it wished to resolve the Complainant's allegations. Pursuant to Section 302 of our *Case Processing Manual*, a complaint allegation may be resolved when, before the conclusion of an investigation, a recipient agrees to resolve the allegation and OCR has determined that the allegation is appropriate for resolution during the investigation. OCR has not completed its investigation and does not yet have sufficient facts to reach a finding of compliance or non-compliance. Therefore, OCR has determined that this allegation is appropriate for a Section 302 Agreement and the School signed an Agreement which, when fully implemented, will resolve this allegation. OCR will monitor the implementation of the Agreement until all terms are fulfilled.

Conclusion

As noted above, OCR will actively monitor the School's implementation of the Agreement until the School fulfills the terms of the Agreement and is in compliance with the statutes and regulations at issue in this case. If the School fails to implement the Agreement as specified, OCR may initiate

administrative or judicial proceedings as described in the Agreement or resume its investigation of the initial allegation. A copy of the Agreement is enclosed.

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 School 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 Complainant may file another complaint alleging such treatment. In addition, the Complainant may have the right to file a private suit in Federal court, regardless of whether 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. If OCR receives such a request, we will protect personal information to the extent provided by law.

If you have any questions, you may contact XXXX, the attorney assigned to this case, at XXXXX.

Sincerely,

/s/

Sandra J. Roesti
Supervisory Attorney

Enclosure: Signed Resolution Agreement

cc (without enclosure): Kimberly R. Davis, Attorney at Law, Udall Shumway
Diane Douglas, Superintendent of Public Instruction