



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
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November 18, 2016

Mr. Freddie Villalon
Principal
Imagine Elementary at Coolidge
1290 West Vah Ki Inn Road
Coolidge, Arizona 85128

Re: Imagine Elementary at Coolidge
Case Number: 08-16-1311

Dear Mr. Villalon:

On February 29, 2016,, we received a complaint alleging that Imagine Elementary at Coolidge (the School) discriminated against the Complainant on the basis of her national origin. Specifically, the Complainant alleged that the School had repeatedly failed to communicate with her in a language that she could understand.

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, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department and a public entity, the School is subject to these laws and regulations.

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

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.

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>.

Background Information

The Complainant is a Spanish speaker whose son (the Student) is currently in XXXX grade at the School, a public charter school that offers kindergarten through sixth grade to over 700 students. On XXXX, the Complainant visited the School to enroll the Student in XXX for the XXXX academic year. The registration/enrollment packet that the Complainant filled out was in English; however, the Complainant answered all questions in Spanish. The health office form, media permission form, and parent survey that the Complainant filled out were also English forms that she answered in Spanish. Finally, in the Primary Home Language Other Than English survey, the Complainant wrote that the primary language used in the home is “Español.” The Student attended XXXX at the School during the XXXX academic year before entering XXXX grade at the start of the XXXX academic year.

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 seven individuals who it relies on for such assistance. The School explained that each of the individuals was qualified to provide this assistance because of “experience translating in schools” or “experience translating in [the] USA and Mexico.” 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 is confident that it has staff members who are qualified to provide such services. OCR interviewed four of the seven individuals the School identified as interpreters/translators; each interviewee indicated that they had not received any training related to interpretation or translation, but did describe various events where they had provided interpretation or translation in Spanish for parents who speak Spanish. OCR noted that two of the interpreters/translators who were interviewed appeared to have difficulty understanding and/or answering questions that OCR asked in English. Also, the Principal explained that he is available to interpret for Spanish speaking families and that many parents contact him directly for school information in Spanish.

The School told OCR that it provides its registration/enrollment packet, free and reduced lunch packet, parent handbook, state testing information letters, and communication to families throughout the school year in both English and Spanish. However, the School produced very little documentation of communication that was sent home to the Complainant in Spanish throughout the XXXX school year. The School gave OCR a copy of three letters that it indicated were sent by the Principal to the parents/guardians of all students at the School, one each on January XXXX, March XXXX, and April XXXX. The School also shared two letters from a XXXX grade teacher that were sent home to the parents/guardians of students in her classroom in both languages, a copy of the free and reduced lunch forms in Spanish, a letter regarding a Check In/Check Out Program in English and Spanish, and a copy of the Student’s report card, which was written in English, but contained comments for the first two quarters that were translated to Spanish.

Conclusion

As noted above, before OCR completed its investigation of this complaint, the School expressed an interest in resolving this complaint pursuant to Section 302 of OCR’s *Case Processing*

Manual (CPM). At this stage, it is unclear to OCR whether the School has a plan in place, of which its employees are aware, regarding how to communicate with LEP parents/guardians who do not speak Spanish or English and accepting a Resolution Agreement at this stage is acceptable. In accordance with Section 302 of the CPM, the provisions of the Resolution Agreement signed by the School on XXXX are aligned with the complaint allegation and the information obtained during OCR's investigation, and consistent with the applicable regulations. Because the School signed the aforementioned Agreement, OCR is closing this complaint investigation effective the date of this letter.

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 XXXX.

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