UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 29, 2017

Mr. Christopher Gdowski, Esq.
Superintendent
Adams County School District #12
1010 E. Tenth St. 85719
Thornton, CO 80241

Re: Adams County School District 12
OCR Case Number: 08-17-1190

Dear Superintendent Gdowski:

On February 8, 2017, we received a complaint alleging Adams County School District 12 (District) at XX (School) discriminated on the basis of national origin. Specifically, the complaint alleges that the District failed to provide the Complainant with a competent Spanish interpreter during the entirety of her son's (Student) November 2016 special education eligibility meeting and failed to provide her with interpreter and translation services during the 2016-2017 school year, so that she could have comparable access to school-related information that was provided to parents/guardians in English.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq. (Title VI) and its implementing regulations at 34 C.F.R. § 100.3(a) and (b), which provides that recipients 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 the benefits of its programs, or subject them to separate treatment. As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulations.

During our investigation we conducted interviews with the Complainant and her advocate and reviewed documents provided by the District. Below is a discussion of our review of the complaint allegations, the relevant facts, the legal requirements, and our findings.

Background

The Complainant is a monolingual Spanish-speaker and the parent of a student who at the beginning of the 2016-17 school year was undergoing an initial evaluation for special education eligibility. The District acknowledged that it was aware that the Complainant was a monolingual Spanish-speaker who required Spanish interpretation and translation of English language documents in order to participate meaningfully in the special education eligibility process.

On August 26, 2016, prior to the special education eligibility meeting, the District provided the Complainant with a copy of procedural safeguards, in Spanish; and the Complainant signed her

receipt of the document. On September 13, 2016, the Complainant also signed a Spanish copy of the Consent for Special Education Initial Evaluation. On October 18, 2016, the District sent the Complainant a Spanish copy of a Notification of Behavior/Education Resource Consultation form. On October 27, 2016, the District sent the Complainant a Spanish copy of a Notice of Meeting for the eligibility meeting. In a telephone interview the Complainant confirmed that she received the above documents in Spanish.

The District asserted that the Complainant was also provided with a copy of the special education evaluation report that was translated into Spanish and that the results were reviewed with the Complainant in Spanish during the eligibility meeting. We reviewed a Spanish copy of the evaluation report, and the Complainant confirmed that she received a translated copy and that the District reviewed the report with her in Spanish. An email from the Director of Elementary Schools also confirmed that the Spanish translation of the evaluation report was sent to the Complainant the day before the eligibility meeting.

At the eligibility meeting on November 9, 2016, the Complainant signed a Spanish copy of an IEP Attendees form. A Spanish interpreter, hired by the District, was among the participants of the meeting that signed the form. Also among the attendees, was an individual that identified herself as a bilingual school psychologist. On the same form the Complainant indicated that she received her procedural safeguards and requested that the entire IEP be translated into Spanish.

The District reported that the duration of a typical IEP meeting is one hour and that 1.5 hours were allocated for the eligibility meeting so that interpreter services could be provided. The District reported that the meeting lasted for 3.5 hours. After two hours the interpreter notified the meeting participants that she would have to leave after another hour and a half in order to attend another meeting. The District reported that the interpreter left with roughly five minutes left in the meeting. The District asserted that it provided the Complainant with the options of either reconvening the meeting at a later date or continuing the meeting with another Spanish speaking-staff member, the School's Registrar/ Secretary. The District's position is that the Complainant chose to continue the meeting with the School Registrar/Secretary serving as the Spanish interpreter.

The Complainant disagreed that there were five minutes left in the meeting when the initial interpreter left. The Complainant estimated that the meeting still went on for 10-15 minutes. The Complainant also disputed that the District offered her the option of reconvening the meeting. The Complainant reported that she requested that the meeting be reconvened but that the School refused and told the Complainant that the meeting had to be finished that day. In a separate interview with the Complainant's advocate, who was also in attendance at the meeting, the advocate corroborated the Complainant's version of how the meeting ended.

The District asserted that by the time the initial interpreter left, all substantive information related to the special education eligibility determination had already been relayed and discussed with the Complainant. The Complainant confirmed that by the time the initial interpreter left the meeting, the evaluation report had been read to her and the findings were discussed. However, the Complainant wanted additional time to discuss the District's eligibility decision.

The eligibility meeting ended with the School finding the Student ineligible for an IEP but eligible for a Section 504 Plan. The Complainant disagreed with the eligibility decision and on November 30, 2016, the Complainant made a request for an Independent Educational Evaluation (IEE). The request was made in Spanish, via email, to the Director of Elementary Schools. The Director of Elementary Schools had the request and her response translated by the District's Translation Services Coordinator.

The Complainant further alleged that aside from the eligibility meeting, the District also failed to provide her with Spanish translation and interpreter services during the 2016-17 school year, primarily regarding her communication with the Student' s classroom teacher.

The District asserted that it substantially complied with the obligations of Title VI during the 2016-17 school year with respect to providing the Complainant with virtually all verbal and written communication in Spanish. The District identified three full-time staff members at the School that were available to interpret in Spanish: the Assistant Principal (AP), the Registrar/Secretary, and the Family Outreach Clerk. The District then cited several examples of documents and instances when Spanish translations or interpretations were provided to the Complainant during the 2016-17 school year.

The District cited the following instances when Spanish translation and/or interpretation was provided: a phone call with the contract interpreter on October 4, 2016 where the evaluation process was explained; a meeting on October 13, 2016 to discuss bullying concerns; a phone call on October 18, 2016 to inform the Complainant that assessment paperwork was being sent home with the Student; a parent-teacher conference on October 20, 2016; a phone call on October 28, 2016 to discuss questions related to the special education evaluation; a meeting on October 31, 2016 to discuss the Complainant' s request for OT and technology evaluations; a November 7, 2016 phone call to remind the Complainant of the eligibility meeting; a Section 504 Plan meeting on November 17, 2016; a meeting with the Complainant and the AP on November 30, 2016 to sign off on the Section 504 Plan; and correspondence in December 2016 related to the Complainant's request for an IEE.

In a follow-up interview the Complainant confirmed that the District provided the interpreter and translation services cited above. The Complainant also confirmed that the School provided the Complainant with notices of field trips, class pictures, and half-days, in Spanish. The Complainant then clarified that the communication issue stemmed from her communication with the Student's classroom teacher about the Student's progress and behavior. The Complainant explained that she asked the teacher on several occasions to let her know how the Student was doing and if there were any issues in the classroom. The Complainant reported that the teacher would rarely email her and when he did, the email messages were in English.

We reviewed emails from the teacher to the Complainant and these were indeed only in English. The emails we reviewed also show that the Complainant responded to many of the teacher's emails. The Complainant clarified that she had to ask friends and family members to help her read the emails from the teacher. In December of 2016 the teacher began to copy the AP on some emails so that the AP could assist with translation.

Alleged Failure to Provide Appropriate Interpreter Services During the Entirety of a November 2016 Special Education Eligibility Meeting

The Complainant alleged that the District discriminated on the basis of national origin by failing to provide her with a competent Spanish interpreter during the entirety of a November 2016 special education eligibility meeting.

With respect to national origin minority, limited English proficient (LEP) 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, states that school districts have the responsibility to adequately notify LEP parents of school activities that are called to the attention of other parents. Further, the May 1970 memorandum states that such notice in order to be adequate may have to be provided in a language other than English. The May 1970 memorandum, as affirmed by the U.S. Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974), continues to provide the legal standard for the Department' s Title VI policy concerning discrimination on the basis of national origin against language-minority students.

The Complainant and the District agree that the Complainant was provided with the following IEP forms in Spanish: the consent for an evaluation form, procedural safeguards, meeting notice, meeting attendance form, and the evaluation report. In an interview the Complainant confirmed that she received the evaluation reports in Spanish, that the reports were reviewed with the Complainant in Spanish while the initial interpreter was still in attendance, and that the Complainant understood the results.

The Complainant and the District disagree on the amount of time left in the meeting after the initial interpreter left. The Complainant alleged that the second interpreter was not a competent interpreter and as a result she did not have enough time to discuss the results of the team's eligibility decision. Both parties agree, however, that by the time the initial interpreter left, the evaluation reports and the team's eligibility decision had been presented to the parent in Spanish and that the Complainant shared her disagreement with the decision.

While the parties agree that the Complainant had all of the information necessary to participate in the IEP meeting, the parties disagree over whether the use of a second, allegedly unqualified, interpreter limited the Complainant's ability to continue her participation. Additional interviews with the second interpreter and additional meeting attendees are necessary in order to make a final determination on that point.

Alleged Failure to Provide Interpreter and Translation Services During the 2016-2017 School Year

The Complainant alleged that the District discriminated on the basis of national origin by failing to provide Spanish interpreter or translation services during the 2016-2017 school year, so that the Complainant could have comparable access to school-related information that was provided to parents/guardians in English.

In our follow-up interviews with the Complainant, she acknowledged receiving class-wide and School-wide notices in Spanish. Of concern, however, was the classroom teacher's insistence on emailing the Complainant in English about information pertinent to the Student's progress in the classroom. This continued despite the teacher's knowledge that the Complainant is a monolingual Spanish-speaker. It is apparent that the teacher should have availed himself of the three individuals at the School that provided Spanish interpretation and translation rather than the Complainant having to rely on friends and family to translate school related information from the teacher. While the Assistant Principal was eventually included in emails between the Complainant and the teacher, that did not occur until December 2016.

Conclusion

Regarding the alleged failure to provide appropriate interpreter services during a November 2016 special education eligibility meeting, we found that further interviews were needed in order to determine the second interpreter's competency as an interpreter and how much of the meeting remained when the initial interpreter left. Regarding the alleged failure to provide interpreter and translation services during the 2016-2017 school year, the evidence we reviewed suggested that the Complainant may not have had comparable access to school-related information that was provided to parents/guardians in English. However, again, further interviews with District staff were required in order to make a final determination.

Further interviews were not conducted because during our investigation and before we had sufficient evidence to make final findings regarding these allegations, the District expressed a willingness to resolve the complaint and entered into a Resolution Agreement with OCR. The District agrees to prepare and conduct a staff training at the School on providing appropriate interpreter and translation services to national origin minority limited English proficient (LEP) parents during Section 504 and IEP meetings; and on the School's responsibility to adequately notify LEP parents of school-related activities that are called to the attention of other parents, including classroom teachers' communications home to LEP parents and during parent-teacher conferences. The District also agrees to provide to OCR written documentation that relevant staff and administrators at the Student's current school (XX) are aware that the Complainant requires interpreter and translation services. The District will also provide OCR with evidence throughout the 2017-2018 school year demonstrating that any Section 504 or IEP meetings regarding the Student that have taken place at XX include the provision of appropriate interpreter and translation services.

A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, this allegation will be resolved consistent with the requirements of Title VI and its implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. We will provide the District written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement. We will provide the Complainant with copies of our monitoring letters.

This concludes OCR's investigation of this complaint and should not be interpreted to address

the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, with a copy to the Complainant, stating that this case is closed.

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.

Under the Freedom of Information Act, we may release this document, related records, and correspondence upon request. If OCR receives a request, we will protect personal information to the extent provided by law.

Individuals filing a complaint or participating in the investigation process are protected from retaliation by Federal law.

Thank you for the District's cooperation and attention to this matter. If you have any questions about this letter, please contact XX, at XX. I can be reached at (303) 844-6083.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

Cc: Walt Kramarz, Deputy General Counsel, Adams County School District 12;
Dr. Kathy Anthes, Commissioner of Education, Colorado Department of Education