



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

March 24, 2021

Mr. Arsenio Romero  
Superintendent  
Los Lunas School District  
119 Luna Avenue  
Los Lunas, NM 87031

via email only at [aromero@llschools.net](mailto:aromero@llschools.net)

Re: Los Lunas School District  
OCR Case Number: 08-20-1430

Dear Superintendent Romero:

On August 21, 2020, we received a complaint alleging that Los Lunas School District (District) discriminated against the Complainant's client (Parent) based on her national origin. Specifically, the Complainant alleges that the District, at Valencia High School (School), failed to provide the Parent discipline-related information 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, the District is subject to this law and regulations.

During the investigation of this complaint, before OCR had sufficient evidence to support findings, the District expressed a desire to take voluntary action to resolve the allegation.<sup>1</sup> Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), complaint allegations may be resolved when, before OCR has concluded its investigation and issued a final determination, a recipient expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve it. OCR has determined that the allegation in this complaint is appropriate for resolution through a Section 302 Agreement. The District has signed an agreement which, when fully implemented, will resolve the allegation raised by the complaint.

## Legal Standards

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<sup>1</sup> OCR reviewed documentation provided by the District and the Complainant, reviewed District policies, and spoke with the Complainant, counsel for the District, and the District's Deputy Superintendent. The District expressed an interest in resolving this case before OCR conducted interviews of District witnesses.

*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 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.

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*.<sup>2</sup> 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. 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 the parents' primary language where necessary to ensure that they can meaningfully participate in their child's education.<sup>3</sup> 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.

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 Parent is a Spanish speaker whose XXX (Student) was XXX XXX XXX student at the School during the 2020-2021 school year (SY). According to data from the 2017 Civil Rights

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<sup>2</sup> 35 Fed. Reg. 11,595.

<sup>3</sup> 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>.

Data Collection, approximately 7.8% of the District’s students are American Indian or Alaska Native, 64.2% are Hispanic or Latino, 25.1% are white, and 2.9% are Black or African American, Asian, Native Hawaiian, or Other Pacific Islander.

On or around XXX, the School contacted the Parent to inform her that the Student needed to be picked up and taken home because XXX had allegedly engaged in behavior that the School categorized as vandalism. The Complainant alleged that the Principal of the School first called the Parent and spoke to her in English, but because the Parent could not understand him, an office employee told the Parent, in Spanish, that the Student had X – allegation redacted – X needed to be picked up because XXX was no longer allowed on school property. The Complainant further alleged that the office employee told the Parent that there would be a hearing regarding the allegation, but when the Parent asked the office employee what would happen next, the office employee again directed the Parent to pick up the Student from school. The Complainant alleged that the Parent did not have an opportunity to ask questions of the Principal and did not receive any information about the Student’s rights. The District told OCR that the Parent did not request interpretation or translation.

The Complainant further alleged that when the Parent arrived at the School to pick up the Student, she was met by the Principal, a police officer, a security guard, and the office employee. The Complainant alleged that the Principal, with the office employee interpreting, explained that the Student had written a statement about the incident, but would not provide the Parent with a copy of the Statement or allow her to review the surveillance video the School told her was in its possession. Finally, the Complainant alleged that the Principal, with the office employee interpreting, told the Parent that the Student was suspended for ten days, could not attend any District school, and would have a hearing, described in a Notice of Discipline that he provided, where the District would determine other consequences. The Notice of Discipline was in English and the Student translated the document for the Parent.

The Parties agree that the Student’s hearing on XXX was conducted in English.<sup>4</sup> The Complainant alleged that the District did not provide a Spanish language interpreter or ask the Parent if one was required, but that the Hearing Officer, who is bilingual, spoke directly to the Parent in Spanish. The Complainant alleged that the Hearing Officer did not interpret the Parent’s statements into English and that when the Hearing Officer spoke to the Student or Principal, she spoke in English and did not offer Spanish interpretation for the Parent. The District provided OCR with an affidavit from the Hearing Officer, which states that the Hearing Officer does not recall the Student’s hearing specifically because she typically conducts 60-70 hearings during each school year,<sup>5</sup> but that she begins each hearing by introducing the

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<sup>4</sup> According to the District, during a hearing, after the hearing officer conducts introductions and describes the hearing process, a District school site administrator will present documentary and testimonial evidence, after which time the party charged with the infraction is given the opportunity to examine the evidence presented, cross-examine witnesses, present their own witnesses, and provide an additional statement. After the submission of evidence has concluded, the hearing officer takes the matter under consideration and then, within the time limit allowed under District policies, issues a written determination.

<sup>5</sup> In her affidavit, the Hearing Officer wrote that “no more than 30% [of her hearings] include students or parents who are non-English speakers.”

participants at the hearing and describing the hearing process, and then asks if anyone doesn't understand the proceedings as she has outlined them and whether they require her to translate the process from English to Spanish. Although the Hearing Officer does not recall the Student's hearing, she said that if the Parent had indicated that she did not understand the proceedings or the results, she could have asked for translation of the proceedings. The District further informed OCR that if "the District had been made aware that allegedly the [P]arent did not comprehend what was occurring," the Hearing Officer would have provided interpretation.

On XXX, the Parent received a letter from the Hearing Officer announcing her decision to expel the Student. The written decision, which included information about the Parent's right to appeal the decision, compulsory education laws in New Mexico, and references to the District's Behavior Handbook, was provided in English and was not translated or explained by a District employee. Rather, the Student described the contents of the letter to the Parent. Following the Student's expulsion, the Parent received a Withdrawal Form from the District, which formally withdrew the Student because XXX had an out of school suspension of more than six months; this form was in English.

The District told OCR that it followed its own disciplinary process after it learned of the Student's alleged vandalism, including by providing an initial opportunity [for the Parent] to be advised of the charges against the Student and an opportunity to respond to those charges. The District explained that the Student was suspended pending the scheduling and conducting of a disciplinary hearing, and that notice of the date and time of the hearing along with information regarding the charges against the Student were provided by the District through the use of their standard forms. The District maintains that the Parent did not request translation of any documents or to receive information in a language other than English.

In response to OCR's request for a list of staff who provide oral interpretation or written translation assistance at the School, the District explained that it relies upon "individuals within the District who are Spanish speakers with knowledge of the specific area" such as discipline, graduation, special education, technology, and administration. The District informed OCR that consistent with its Understandable Language policy, the District will provide language assistance after receiving a request or indication from a person that they require such assistance. OCR reviewed the Understandable Language Policy and found that it is part of and found within District Policy 7.31, "Special Education: Written Notice of Proposed Actions" and is specific to communications with notices of proposed actions with respect to students with disabilities.

The District did not provide OCR with any documentation of communication that was sent home to the Parent in Spanish between August 2019 and November 2021. However, the District told OCR that it routinely translates a number of documents into Spanish, including, but not limited to: the District's Early Childhood Handbook and Early Childhood Brochure, an Ages and Stages Questionnaire (a developmental screener for New Mexico preschool classrooms), the McKinney-Vento Housing Survey, an end of year preschool parent survey, the New Mexico Public Education Department Language Usage Survey, and Child Find forms. Additionally, the District uses a web-based translation plug-in to provide access to the content on its webpage in ten languages, including Spanish. When OCR attempted to access some documents, such as the

2020-2022 LLS Student Behavior Handbook, in Spanish on February 5, 2021, OCR received a message “Google Translate can’t translate this page.” Finally, the District provided OCR with a copy of its Invitation to Educational Program Meeting notice that it uses for special education meetings; this notice is in English and states, in part, “If you cannot attend the meeting at this time, and/or you need a translator or interpreter, please contact [name] at [phone number].”

## **Conclusion**

As noted above, before OCR completed its investigation of this complaint, the District entered into the attached Resolution Agreement (Agreement) to resolve the concerns raised in the complaint. The Agreement requires the District to: (1) develop and fully implement a Plan for Oral and Written Language Assistance (Plan) to provide language assistance services to national origin minority LEP parents/guardians of students at the District; (2) develop plans for initial and ongoing training of staff that provide oral interpretation and/or written translation for parents/guardians at the District; (3) hire an independent, approved interpretation and translation service to provide language assistance until the District implements its Plan; (4) expunge the Student’s discipline record of any incident that occurred on or after XXX; and (5) either provide the Student and Parent with due process that is consistent with Title VI and the District’s discipline-related policies and procedures or reenroll the Student on procedural due process grounds.

When the Agreement is fully implemented, the complaint allegation will be resolved consistent with the requirements of Title VI and its implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. We will copy the Complainant on our monitoring letters. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

This concludes OCR’s investigation of the allegation and should not be interpreted to address the District’s compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

Please note that a complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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 individual may file a complaint alleging such treatment.

This letter sets forth OCR’s determination in an individual 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.

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.

Thank you for your attention to this matter, the District's cooperation, and counsel's assistance. If you have any questions, please contact Allison Morris, the attorney assigned to this case, at XXX-XXX-XXXX, or by email at XXX.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Attachment: Signed Resolution Agreement

Cc: Jacquie Archuleta-Staehlin, Counsel for the District  
Brian Baca, Deputy Superintendent  
Dr. Ryan Stewart, New Mexico Superintendent of Education