



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VIII

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August 9, 2023

Ms. Erin Kane
Superintendent
Douglas County School District RE-1
620 Wilcox Street
Castle Rock, Colorado 80104

By email only to erin.kane@dcsdk12.org

Re: OCR Case No. 08-23-1217
Douglas County School District RE-1

Dear Superintendent Kane:

On January 17, 2023, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against the Douglas County School District RE-1 (District) alleging that the District discriminated against the Complainant and her daughter (Student) on the basis of national origin when the STEM School Highlands Ranch (School) failed to ensure meaningful communication with the Complainant, whose primary language is not English, which, during the 2022-23 school year (SY), resulted in a) the denial of assistance/benefits to the Student due to incorrect reporting, and b) the Student incurring fines/fees.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over this matter pursuant to Title VI.

I. Investigation Summary

On March 14, 2023, OCR opened the allegations for investigation in accordance with OCR's *Case Processing Manual* (CPM). OCR's investigation included interviewing the Complainant¹; reviewing documents pertinent to the complaint allegations, including information, records, and data from the District; and, interviewing the School's Executive Director (Director). During the course of the investigation, OCR identified concerns related to the District's and School's compliance with Title VI. The District and School voluntarily agreed to address the allegations

¹ OCR notes that a [redacted content] interpreter was provided during the phone interview with the Complainant; however, the Complainant declined to use the interpreter and insisted that OCR proceed with the interview in English.

by signing the enclosed resolution agreement (Agreement), pursuant to Section 302 of the CPM. OCR explains its decision in further detail below.

II. Factual Findings

The Complainant, whose national origin and primary language is [redacted content], is the parent of two students, including the Student and her sister, who attend school in the District. The Complainant enrolled the Student in the District as early as the 2011-12 school year and, at the time, indicated that [redacted content] was spoken in the home but that English was the primary language spoken by the parents/guardians. During the 2021-22 and 2022-23 school years, the Student attended the School, a charter school authorized by the District. Because the School is a charter school, certain programs and benefits (*e.g.*, free and reduced lunch program, etc.) available to students attending the School are coordinated by the District.

The District's website (Website) provides information in English, however, the Website has a drop-down box which permits visitors to select and view the information available on the Website in 14 other languages, including [redacted content]. The Website also includes a webpage titled "Language, Culture, and Equity" that explains parents/guardians may request interpretation services and provides a card, translated into five languages including [redacted content], which parents/guardians may provide to staff to request language assistance services. The Website links to all of the District's schools, but while the District's traditional school websites use the same platform that provides direct translation into 14 other languages, the District's charter school websites do not have this feature. As a result, the School's website is only available in English. The School's website also does not provide a link to the Website from its main landing page nor does it provide notice to parents/guardians that they may request language assistance services.

The District primarily relies on the information collected at the time of student registration through its "Express Check-In" process to determine whether a parent/guardian needs access to a language interpreter and/or translated documents. Similar to the Website, the registration process permits the user to toggle between languages, including [redacted content], when completing the process. For students who may reside in more than one home throughout the school year (*e.g.*, in the case of parents who maintain separate households), "Express Check-In" allows the user to set up a primary and secondary household with different preferences for each parent/guardian with whom a student resides. The District indicated that the Student's father (Father) completed the "Express Check-In" process for the Student during the 2021-22 school year; however, though he and the Complainant maintain separate households, he did not provide information indicating that the Complainant needed language assistance services.

During the 2021-22 and 2022-23 school years, the Complainant frequently communicated with the District and School by email. On more than one occasion during this time period, the Complainant raised concerns about her daughters being denied the benefits under the District's free and reduced lunch program. During the 2022-23 school year, the Complainant also raised concerns about the Student incurring fees at the School, which the Complainant described to OCR as lunch fees the School had previously waived. While the Complainant always issued and

responded to communications in English, at times the response was provided in broken and/or misspelled English or the content of the message indicated that the Complainant may not have fully understood the message provided by the District or School staff. For example, the Complainant was notified by the District's Director of Nutrition Services that her application for the free and reduced lunch benefit program was denied because the Complainant's income exceeded the allowable limits. After the Complainant expressed concern about the denial, the District's Free & Reduced Accounts Payable Specialist (Specialist) contacted the Complainant to review the income information she provided in light of the program limits. In response, the Complainant did not address any errors in the information or take up the Specialist's offer to go over the information together; rather, the Complainant responded with information about the Father's tax situation and stated that it was the Specialist's fault she had been denied. Eventually the Complainant provided a copy of her paycheck, but continued to express uncertainty as to the basis for denial. Though miscommunications seemed to occur frequently throughout the numerous communications the Complainant had with the District and School staff, there was no evidence that she requested language assistance services from the District or School staff during this time period, nor that it was offered to her.

During OCR's interview with the Director, OCR inquired about the School's process for identifying national origin minority parents/guardians in need of communication services, and related training provided to staff. The Director explained that the School relies on the information provided by the parents during enrollment, including a description of the home language survey, and that when a parent has indicated a need for interpretation or translation it is apparent in the student's profile in "Infinite Campus." She explained that the School is responsive to requests it receives for interpretation and translation service, but reiterated that the School must be aware of the need in order to respond. Absent the indication in the enrollment information or a parent-initiated request, though, the School does not otherwise affirmatively inform parents/guardians of the opportunity to request language assistance. Further, when OCR inquired about the training staff received, the Director stated she was not aware of training for staff regarding communicating with parents in need of communication services or for staff providing interpretation services on campus.

The District provided documentation to OCR demonstrating that it uses a third-party contractor to provide interpretation and translation services to parents/guardians who are LEP. The District also provides a guidance document to staff which explains the requirements underlying the need for requesting and using interpretation and translation services and reiterates that "[a]ll families, regardless of whether their children are eligible for English Language Development (ESL services), must receive communications in a language they understand." The guidance document explains the process staff must follow when requesting services. However, the Director explained to OCR that because the School is a charter school, unlike traditional District schools, it must contract with a third party for services separately from the District. While the School used the District's language assistance services in prior years, the Director was currently in the process of determining how the services would be provided for the upcoming school year because the School would no longer be able to access the contracted language services as "purchased services" from the District.

Following OCR's interview with the Director, she contacted the Complainant about her communication needs and the Complainant confirmed that her preferred home language is [redacted content], not English, and indicated that the Student would not be attending the School in the upcoming 2023-24 school year.

OCR contacted the Complainant by email to inquire further about her allegations², specifically including information about requests for language assistance and additional responses she may have provided regarding the free and reduced lunch program; however, as of the date of this letter, the Complainant has not responded with relevant additional information to OCR.

III. 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.

On May 25, 1970, pursuant to its authority under Title VI, the Department issued a memorandum entitled *Identification of Discrimination and Denial of Services on the Basis of National Origin*.³ The memorandum clarified OCR policy under Title VI on issues concerning the responsibility of recipients to provide equal educational opportunity to limited English proficient (LEP) national origin minority students and their parents/guardians (parents). LEP parents are parents or guardians whose primary or home language is other than English and who have limited English proficiency in one of the four domains of language proficiency (speaking, listening, reading, or writing).

The May 25, 1970 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 the parents can meaningfully participate in their child's education.⁴ Further, recipients must develop

² OCR contacted the Complainant by email on May 12, 2023, and provided the questions and requested due date in English and [redacted content].

³ 35 Fed. Reg. 11, 595.

⁴ 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

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 of children who are proficient in English. The school's initial inquiry should, of course, be translated into languages that are common in the school and surrounding community so that the inquiry is designed to reach parents in a language they are likely to understand. Schools may also use other processes reasonably calculated to identify LEP parents and should identify the language needs of LEP parents whenever those needs become apparent.

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.

IV. Analysis

During OCR's investigation, OCR found that the Complainant, who is a national origin minority parent with communication needs, indicated a preference for communicating in English and declined OCR's offer to use a [redacted content] interpreter; however, these preferences do not alleviate the District's and School's obligation to adequately provide notice of information that is called to the attention of other parents in a language the parents understand, have and implement a process for determining whether parents are LEP, and subsequently offer and provide oral interpretation and written translation services to ensure meaningful communication occurs. OCR also found that the District provides information in a number of translated languages on its website, directs LEP parents/guardians how to request interpretation services from staff on the Website, and offers an opportunity for parents/guardians to indicate language preferences during the registration process. However, based on the information obtained during OCR's investigation and the differentiated treatment between traditional District schools and its charter schools, OCR identified concerns about the School's compliance with Title VI.

Generally, OCR identified concerns related to the School's process for identifying parents who are in need of communication services based solely on information provided at the time of registration, as oversights may occur as was the case with the Complainant. Further, there is no evidence that parents/guardians are otherwise informed by the School of the ability to receive language assistance unless they initiate a request on their own accord and School staff is not adequately trained about how to recognize when the services may be needed. In addition, unlike the Website, the School's website does not provide information about requesting language assistance. Neither does it direct visitors to access the information available on the District

about any program, service or activity that is called to the attention of non-LEP parents. The *Dear Colleague Letter* may be found at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

website. OCR also noted concerns about the Director's uncertainty of how the School intended to provide contracted language assistance services during the 2023-24 school year.

In addition to the general concerns outlined above, OCR identified concerns about the District's and School's interactions with the Complainant. While the Father completed the Student's School registration and no language preferences were recorded on behalf of the Complainant, there is no indication that during the school year the Complainant was otherwise provided an affirmative notice of her rights to access language assistance services and neither the District nor School inquired about whether the Complainant needed language assistance. The District's and School's continued communications with the Complainant in English, without notice or inquiry into the need for language assistance, raised further compliance concerns for OCR and may have contributed to the continued misunderstandings regarding the District's free and reduced lunch program and the fees incurred at the School.

The District and School expressed an interest in voluntarily resolving the allegations and OCR's compliance concerns through a voluntary resolution agreement by email on July 11, 2023. Pursuant to Section 302 of the CPM, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and when OCR has determined that identified concerns can be addressed through a voluntary resolution agreement.

I. Conclusion

The District and School voluntarily agreed to address OCR's concerns by signing the enclosed Agreement on August 8, 2023. When fully implemented, the Agreement will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the complainant(s) and the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statute and regulations. OCR will monitor the District's and School's implementation of the Agreement until the District and School are in compliance with the statute and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR 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. If the District and School fail to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-23-1217 and will send a letter to the Complainant, the School, and the District stating that the 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. Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), 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, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions, please contact Colleen Brooks, the OCR attorney assigned to this case, at 303-844-0196 or Colleen.Brooks@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Program Manager

Cc: Ms. LynAnn Kovalesky
Executive Director
STEM School Highlands Ranch
By email only to lynann.kovalesky@stemk12.org

Ms. Wendy A. Jacobs
Deputy General Counsel
Douglas County School District RE-1
By email only to wjacobs@dcsdk12.org

Ms. Susana Córdova
Commissioner
Colorado Department of Education
By email only to cordova_s@cde.state.co.us