



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

February 23, 2015

Pam Able
Superintendent
Modesto City Schools District
426 Locust Street
Modesto, California 95351

(In reply, please refer to case no. 09-14-1443.)

Dear Superintendent Able:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Modesto City Schools District (District). The complaint alleged that the District subjected certain parents to discrimination on the basis of national origin. Specifically OCR investigated whether the District denied limited English proficient (LEP) parents the opportunity to participate meaningfully in District Board meetings by failing to provide adequate oral interpretation at the meetings.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department, is a public education entity, and is subject to the requirements of Title VI and its implementing regulations.

To investigate this case, OCR spoke with the complainant and reviewed documentation and video recordings provided by the District. Based on the evidence, OCR concluded that the evidence was sufficient to support a conclusion of noncompliance with Title VI. The District, without admitting to any violation of law, entered into a Resolution Agreement that, when fully implemented, will resolve noncompliance issues identified by OCR.

The facts OCR gathered relevant to the allegation, the applicable legal standard, and the reasons for OCR's determinations are summarized below.

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.

The May 25th memorandum states that school districts 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 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 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.

Our investigation showed the following:

- The complaint alleged that the District failed to provide LEP parents the opportunity to participate meaningfully in District Board meetings by failing to provide adequate oral interpretation at District Board meetings during the 2013-2014 school year.
- According to data from the Civil Rights Data Collection, during the 2011-2012 school year, 39.5% of students enrolled in the district were classified as limited English proficient (LEP).¹ Data available from the California Department of Education website for the 2013-2014 school year shows that 5,678 of the 15,385 students in the District were Spanish speaking English learners (EL) and 46.75% of all students enrolled were either Spanish speaking ELs or Fluent English Proficient (FEP).²
- The District's Governing Board (Board) meets in regular session once every three weeks. The District does not have any specific policy for providing

¹ U.S. Department of Education, Civil Rights Data Collection, Modesto City Elementary School District Characteristics and Membership (2011-2012) (available at <http://ocrdata.ed.gov/Page?t=d&eid=30409&syk=6&pid=736>).

² California Department of Education, Modesto City Elementary School District, Language Group Data – Districtwide (2013-2014) (available at <http://data1.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=District&TheYear=2013-14&SubGroup=All&ShortYear=1314&GenderGroup=B&CDSCode=5071167000000&RecordType=EL>)

translation/interpretation services to LEP parents or guardians at its Board meetings. The District explained that when a parent requests translation or an interpreter, the District makes necessary arrangements to have an interpreter present.

- During the 2013-2014 school year, the District stated that translation or interpretation services were provided at Board meetings on only two occasions. The first instance involved a parent requesting assistance translating a letter he read to the Board concerning a review of the District's Local Control and Accountability Plan on May 19, 2014. The second instance was a special item on the June 16, 2014, Board Meeting Agenda requested by a parent to discuss the closing of a Dual Language Academy at a District school.
- The District provided a link to a video of the May 19, 2014 Board Meeting (<https://www.youtube.com/watch?v=P64gyjt6JaE&feature=youtu.be>) (May 19th Board Meeting), which was viewed by an OCR staff attorney who understands and speaks Spanish.
- The video showed that at the May 19th Board Meeting, a Spanish speaking parent read a prepared letter in Spanish to the Board. A Board Member volunteered to interpret the parent's remarks to the Board. The District stated that the Board Member was fluent in Spanish and interpreted for the parent during the meeting, including reading the letter from the parent to the Board.
- The video showed that, prior to his presentation to the Board, the parent stated that he expected translation to be available at the meeting, but that there did not seem to be anyone available to interpret. The Board Member volunteered to interpret for the parent but noted that he might embarrass himself. A copy of the parent's letter was provided to the Board Member so that he could read what was being said. At several moments during the translation, the Board Member turned to the audience to request assistance with certain words and phrases, including "foster children," "emphasis," and "update." The Board Member, at times, also incorrectly translated certain sentences.
- While the parent's statement to the Board was interpreted by the Board Member, statements made by Board members and other audience members were not interpreted for the parent during the remainder of the May 19th Board Meeting.
- The District provided a Spanish interpreter for the June 16, 2014, Board Meeting (June 16th Board Meeting). The interpreter services were requested by a parent to address the Board about the closing of a Dual Language Academy at a District school. The designated Spanish interpreter was a District Bilingual Attendance Liaison (Liaison).
- The District provided OCR a link to video of this agenda item (<http://www.youtube.com/watch?v=Y-WZQEXbBh8&feature=youtu.be>). This video

was also reviewed by an OCR staff member who speaks and understands Spanish.

- A review of the video showed that the Liaison was not provided with a prepared statement by the parent and did not receive any interpretation assistance from any audience member during the Board meeting.
- The video of the June 16th Board Meeting also showed the Liaison had some difficulty with the interpretation, as there were instances where she forgot to interpret certain words or failed to correctly interpret what was being said. In one instance, a LEP parent talks about how studies by the state show that students have not been meeting their goals for ten years. The Liaison interpreted this as “...all students have not been able to reach their goals and these are reports coming in from different sources and this is year after year that this is going on.” The LEP parent mentions ten years again so that the Liaison will interpret this point. At another point, a parent talks about how, in the Dual Language program, parents were told that the students were learning the two languages very well. The Liaison translated this as “[parents] were told that . . . our kids were being successful learning at the pace that they needed to be.”
- Two LEP parents addressed the Board during the June 16th Board Meeting. The video showed that interpretation was provided for the LEP parents when they made their statements and that the Board’s responses to those statements were interpreted for the parents.
- Six other audience members addressed the Board in English during the same agenda item. The statements of these audience members, and the Board’s responses to the statements, were not interpreted into Spanish for the LEP parents in attendance.
- Interpretation was not provided for any other agenda item during the June 16th Board Meeting.

Based on its review of the evidence discussed above, OCR concluded that the limited interpretation services provided at Board meetings during the 2013-2014 school year failed to comply with Title VI. Under Title VI and the May 25th Memorandum, school districts are required to ensure that parents who do not speak English are provided equal access to its programs, including Board meetings, and are provided important information in a language they can understand. This access is especially important at board meetings, where significant issues about District educational programs are regularly discussed and decided. When the Board provides an opportunity for parents to give input to the Board, such as speaking during a public comment period or during an agenda item, it must give access to parents who do not speak English that is comparable to that afforded to English speaking parents.

The District informed OCR that it arranges for interpreters to be present at Board meetings when a parent requests interpretation. However, the interpretation provided at both the May 19th and June 16th Board Meetings demonstrate deficiencies with the District's current process. During the May 19th Board Meeting, the District was not prepared to provide interpretation and relied on a Board Member who, while fluent in English and Spanish, did not demonstrate sufficient interpretation skills when interpreting a Spanish speaking parent's prepared remarks from Spanish into English. The Board Member also did not interpret any statements made by the Board or other audience members into Spanish for the parent or any other LEP parents in the audience. Finally, the Board Member's participation as an interpreter limited his participation as a member of the Board during the time he was interpreting.

While the District had an interpreter available for the June 16th Board Meeting, the interpretation was still lacking in two areas. First, the interpreter misinterpreted certain statements made by Spanish speaking parents/community members in ways that failed to convey important parts of their statements accurately to the Board. Second, the interpreter only provided interpretation during presentations made by Spanish speakers and failed to provide any translation for LEP parents in the audience when an English speaker addressed the Board.

Based on the size of the EL and FEP student population whose home language is Spanish, OCR determined the LEP Spanish-speaking parent population in the District to be over forty-five percent (45%). In spite of the high proportion of Spanish speakers among District parents, the District acknowledged that it provided interpretation at only two Board meetings last school year. While the District has made efforts to provide interpretation, in the two cases where interpretation was provided, there were significant lapses in the quality of the interpretation. Without adequate interpretation services, LEP parents do not have an equal opportunity to meaningfully participate in their children's education as compared to fluent English speaking parents. Accordingly, based on a preponderance of the evidence, OCR concluded that the District had not provided LEP parents with effective access to Board meetings, in violation of Title VI.

The District agreed to address the compliance concerns through signing a Resolution Agreement, a copy of which is attached. The Resolution Agreement requires the District to develop a procedure to ensure that LEP parents in the District are able to understand and participate effectively in meetings of the District's Governing Board, including the translation of agendas, notices and calendars of Board meetings, and notices describing how LEP parents can request interpreting services at Board meetings in Spanish and English. The procedure will describe how the District will provide qualified interpreters at Board meetings, and how interpreters are expected to enable LEP parents who attend to understand the proceedings and/or to make statements or presentations to the Board. The District will also describe the procedure during the next English learner parent advisory committee meeting held after the procedure is officially adopted. The English learner advisory committee shall describe the procedure to LEP parents at school sites which have 21 or more EL students.

OCR will monitor the District's implementation of the Resolution Agreement. Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. The complainant is concurrently being notified.

This letter 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. 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.

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, such individuals may file a complaint with OCR alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please contact Alvaro Soria at (415) 486-5580, or Kana Yang at (415) 486-5382.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure

cc: Diane Beall, Counsel (e-mail only)
Kronick, Moskovitz, Tiedemann & Girard, LLP