



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

January 19, 2016

Chris D. Funk
Superintendent
East Side Union High School District
830 North Capitol Avenue
San Jose, CA 95133-1316

(In reply, please refer to case no. 09-15-1253.)

Dear Superintendent Funk:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against East Side Union High School District (District). OCR investigated whether the District discriminated against the complainant¹ based on national origin by failing to provide her with important information in her primary language when such information is provided to English-speaking parents about an incident for which the Student was disciplined and subsequently transferred to another high school.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 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 is a recipient of Federal financial assistance from the Department and a public entity. Therefore, OCR has jurisdiction over this complaint.

OCR gathered evidence through interviews with the complainant and District staff, and reviewed documents and correspondence provided by the complainant and the District. Based on the information obtained, OCR found sufficient evidence of noncompliance with Title VI with respect to the issue investigated in this case. The applicable legal standards, the facts obtained during the investigation, and the reasons for our determination are summarized below.

OCR's investigation showed the following:

The Student was enrolled at a high school in the District (School) during the 2014-2015 school year. The complainant told OCR that the Student was alleged to have sexually harassed a female student at the School (Student 2) on September XX, 2014. The complainant stated that no such harassment took place, and requested video footage of

¹ OCR notified the District of the complainant's name at the beginning of the investigation. OCR is withholding the complainant's name from this letter to protect the complainant's privacy.

the incident in question (Incident) from the School. She told OCR that the School denied her request.

The complainant also stated that following the Incident, the Student and the complainant attended a meeting with the School Assistant Principal (Assistant Principal), at which a student advisor (Student Advisor) provided interpretation in Spanish for the complainant. When OCR asked if she understood what the Student Advisor had said, the complainant replied that she was crying and very upset at the meeting, and did not know whether she understood what was explained to her. The complainant told OCR that she was given a piece of paper in English, which she said she did not understand, and asked to sign it and then give to the School Secretary (Secretary), who would in turn give her another piece of paper regarding the Student's transfer to another school. She was also asked to turn in the Student's books to the Secretary, which she did. She later collected another piece of paper from the School Principal, which she said she also did not understand, and gave it to the Secretary.

When OCR asked the complainant if the Student had been expelled from the School, the complainant stated that she did not know. She stated that the Assistant Principal told her that the Student had to transfer to another school for one school year, was not allowed to be on the School campus during that period of the time, and would be allowed to reenroll at the School at the start of the 2015-2016 school year. However, the complainant stated that no one contacted her regarding the prospect of the Student reenrolling at the School in the 2015-2016 school year. She also told OCR that a staff member at the School became acquainted with the Student and wanted him to enroll in summer school at the School during the summer of 2015. The complainant told OCR that since the Student was not allowed to be on campus, she did not enroll him in summer school.

The Student enrolled at another school (School 2) in October 2014. The complainant reiterated that she did not understand why he had been transferred to School 2 in the aftermath of the Incident, and believed that there should have been further investigation of the Incident.

The District's data response stated that the School held a meeting with the complainant on November XX, 2014 to discuss the Incident. The Assistant Principal, the Student and the Student Advisor, who served as a Spanish-English interpreter for the complainant, also attended the meeting. The District presented the complainant with a letter in English, which denied her request for video footage of the Incident since the footage was only available for seven days after the date of the Incident and could no longer be accessed. The District stated that the Student Advisor provided an oral translation of the letter from English to Spanish for the complainant. However, the complainant told OCR that rather than providing an oral translation of the letter, the Student Advisor interpreted what the Assistant Principal said during the meeting, which included a discussion of the School's

decision to transfer the Student to another high school as a consequence of the Incident. The District stated that it did not provide the complainant with any further written documentation in English apart from the aforementioned letter, and no documentation in Spanish.

The District stated that there are no districtwide procedures that govern the provision of interpretation and translation services in the District. Interpretation and translation services are coordinated at individual school sites. There are no Districtwide interpreters or translators.

Per the District's Collective Bargaining Agreement (Agreement), the District offers bilingual stipends to eligible staff members who pass a competency test. Section 15.14.1 of the Agreement states:

A monthly stipend of sixty five dollars (\$65) per month (regardless of FTE) may be offered to unit member(s) to facilitate communication between staff and non-English speaking parents/guardians. Duties may include, but are not limited to, oral translation in matters related to student registration, student records, attendance, discipline, conferences and meetings.

The District stated that if the staff member who first made contact with a parent in the front office of the school, the Assistant Principal/Principal's office or the counseling office determined that the parent needed interpretation, the staff person would typically offer interpretation services to that parent. There are staff members in each of these three offices who are available to provide interpretation or translation services in Spanish or Vietnamese to parents. The District identified seventeen staff members – ten who spoke Spanish and seven who spoke Vietnamese – who provided interpretation and/or translation services at the School. One Spanish-speaking staff member and one Vietnamese-speaking staff member of those identified had passed the competency test and received bilingual stipends from the District. No assessment was done of the competency of any of the other staff members in the target language before they began interpreting. No staff members at the School were provided any training in interpretation or translation during the 2014-2015 school year.

Regarding the Student Advisor's qualifications to provide interpretation services in Spanish to parents, the District stated that the Student Advisor had Cross-cultural Language and Academic Development (CLAD) certification, and Spanish was his first language. The District offered no further information as to his training, competency or qualifications to provide interpretation or translation services from Spanish to English and English to Spanish.

Legal Standard

Language for Limited English Proficient (LEP) individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. 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. School districts have an 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.

Pursuant to OCR policy interpreting Title VI and the May 25th Memorandum, this obligation requires the District 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.² In addition, school districts must develop and implement a process for determining whether parents are LEP and identify their language needs. The process should be designed to

² 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>.

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 district. School districts 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. School districts 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.

Analysis

Parents of elementary and secondary students, including the complainant in this matter, are expected to have regular and frequent contact with their children's schools and school districts under a number of federal and state laws that require or support parent participation in the educational programs serving their children, including the student disciplinary process, in which parents and students are guaranteed certain due process rights. The District is responsible for identifying and implementing appropriate methods for ensuring that all LEP parents are provided with meaningful access to student disciplinary information concerning their children. These methods may vary depending on the nature of the information and the size of the particular language group; but based on the frequency of parent contact and the importance of disciplinary process for students, the District is responsible for providing meaningful access to the discipline process, including due process for LEP parents.

The District enrolls a significant number of students from families where the parents or guardians have limited English proficiency. More than 35% of the students in the District are Spanish-speaking English Learner (EL) students or redesignated as English proficient. Almost 50% of the students at the School are Spanish-speaking EL students or redesignated as English proficient. OCR found that the District does not have a formal process for identifying LEP parents who need interpretation or translation during the IEP process. There is no regular procedure or practice in place to verify with parents whether they need oral interpretation or written translation, and to provide reliable and accurate interpretation and/or translation of documents for LEP parents. LEP parents were not informed of their right to have information and/or documents translated or interpreted or provided an explanation of the process for requesting such language services.

In this case, while the complainant was provided a Spanish-speaking interpreter at the meeting she attended to discuss the Incident, no assessment was done of the interpreter's

qualifications to ensure that he could accurately communicate with the complainant about the Student's disciplinary process. Indeed, the complainant told OCR that she still did not understand why the School transferred the Student to School 2, whether the transfer constituted an expulsion, and what options she had for contesting or appealing the School's decision. OCR notes that only two of the seventeen staff members who provide interpretation or translation services to LEP parents at the School have undergone an assessment of their qualifications in the target language. No staff members have received any training on interpretation/translation protocol, or on the school-based terms and concepts with which they should be familiar in order to ensure accurate communication with LEP parents.

Disciplinary documents such as suspension notices or school transfer notices contain information that is critically important to parents and the rights of their children to an education. Copies of such documents are regularly provided in English to English-speaking parents so they understand a school district's proposed decisions and actions about the student. The District told OCR that at the November XX, 2014 meeting, the Student Advisor provided an oral interpretation of a letter from the Assistant Principal, denying the complainant's request for video footage of the Incident. According to the District, the only written documentation provided to the complainant, in English or Spanish, was this letter from the Assistant Principal, denying the complainant's request for video footage of the Incident. The complainant was not provided documentation in English or Spanish at the meeting which explained the basis for the School's decision to transfer the Student to School 2, or documentation offering her the opportunity to appeal the decision. Nor was she provided oral interpretation in Spanish of such documentation in English.

For these reasons, OCR finds that the District denied the complainant the opportunity to participate meaningfully in the Student's disciplinary process following the Incident by failing to provide her with information about the transfer to another high school in a language she could understand. Consequently, OCR finds the District is not in compliance with Title VI and its implementing regulations with regard to the allegation investigated.

Conclusion

To address OCR's compliance concerns, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation. Pursuant to the agreement, the District will, within specified timeframes: develop written policies and procedures to provide oral language and written translation services upon request to LEP parents of students all schools in the District; deliver training for the staff who provide such services; and provide individual remedies to the complainant, including information about the School's decision to transfer the Student in a language she can understand.

Based on the commitments made in the attached resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently.

When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with Title VI and the regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Recipient 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.

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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR thanks the District for its cooperation and courtesy during this investigation. If you have any questions about this letter, please contact Shilpa Ram, Civil Rights Attorney, at (415) 486-5565, or shilpa.ram@ed.gov.

Sincerely,
/s/

Zachary Pelchat
Team Leader

Enclosure