



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

REGION IX  
CALIFORNIA

December 23, 2016

Julie Hall-Panameno  
Educational Equity Compliance Office  
333 South Beaudry Avenue, 20th Floor  
Los Angeles, CA 90017

(In reply, please refer to case no. 09-16-1606.)

Dear Ms. Hall-Panameno:

The U.S. Department of Education, Office for Civil Rights, has completed its investigation of the above-referenced complaint against the Los Angeles Unified School District (District). The complaint was filed by Public Counsel (Counsel) on behalf the Student and his Parent,<sup>1</sup> and alleged discrimination on the basis of national origin and disability. Specifically, OCR investigated the following issues.

- Whether the District denied the Student, a monolingual Spanish speaker, a free appropriate public education (FAPE) by failing to take the Student's English language ability into account when evaluating the Student's individual needs and determining special education programs and services;
- Whether the District failed to provide the Student with educational services appropriate to his level of English proficiency that are designed to address his language related needs; and
- Whether the District denied the Parent, a monolingual Spanish speaker, the opportunity to participate meaningfully in the special education process by failing to provide oral interpretation and written translation of important information and documents in her primary language.

OCR began its investigation of this complaint under the authority of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990 (Title II), Section 504 of the Rehabilitation Act of 1972 (Section 504), and their implementing regulations. Title VI prohibits discrimination on the bases of race, color, or national origin by recipients of Federal financial assistance. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Title VI, Title II, Section 504, and the implementing regulations.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the complaint with an agreement during the course of an investigation. Prior to the completion of OCR's investigation, the District informed OCR it was amenable to resolving the complaint in this manner. OCR and the District entered into the

---

<sup>1</sup> OCR previously notified the District of the identities of the Parent and the Student. OCR is not including their names here to protect their privacy.

attached agreement to resolve the complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Title VI, Title II, and Section 504.

The applicable legal standards, the relevant facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

### **Legal Standards**

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b), 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 benefits of its programs, provide any service or benefit which is different or provide such service or benefit in a different manner from that provided to others under the program. In determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration that 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 (May 25th memorandum). The memorandum clarified OCR policy under Title VI regarding 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 take affirmative steps to address the language needs of limited English proficient students (English learners).

The May 25<sup>th</sup> memorandum provides that school districts may not assign national origin minority group students to special education programs on the basis of criteria which essentially measure or evaluate English language skills. Therefore, districts must employ standards and procedures for the evaluation and placement of English Learner (EL) students in special education that reliably identify students' educational disabilities, rather than the students' lack of English proficiency. In this regard, school districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.

Finally, 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 limited English proficient (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.

The Section 504 implementing regulations, at 34 C.F.R. §104.33, requires school districts to provide a FAPE to students with disabilities. An appropriate education is defined by the regulations as one which includes the provision of regular or special education as well as related aids and services which have been designed to meet the individual needs of the student with a disability, and which has been developed in accordance with the procedural requirements of §§104.34 through 104.36, pertaining to educational setting, evaluation, placement and procedural rights. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations. One way to meet the requirements of Section 504 with respect to FAPE is to implement an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA). 34 C.F.R. §104.33(b)(2).

The Section 504 regulations, at 34 C.F.R. §104.35(a), also requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and any subsequent significant change in placement. Under subsection (b), tests and other evaluation materials must be valid for the specific purpose for which they are used and must be administered by trained personnel in conformance with the instructions provided by their producer. When administering written or oral evaluations to determine whether an EL student has a disability under Section 504, school districts must administer those evaluations in an appropriate language to avoid misclassification. 34 C.F.R. pt. 104, App. A at number 25.

34 C.F.R. §104.35(c) requires that, in interpreting evaluation data and in making placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are), school districts must draw information from a variety of sources, including cultural background, which OCR interprets to include linguistic background. Information from all sources must be carefully considered and documented. Placement decisions must be made by a group of persons knowledgeable about the student, including the student's language background, the meaning of the evaluation data, and placement options. To ensure that EL students with disabilities receive services that meet their language and special education needs, it is important for members of the placement team to include professionals with training, and preferably expertise, in second language acquisition and an understanding of how to differentiate between the student's limited English proficiency and the student's disability. In determining an appropriate placement for a disabled student who is an EL, the placement team must consider the student's educational needs with respect to English language acquisition as well as access to the core curriculum. School districts must provide EL students with disabilities with both language assistance and disability-related services.

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 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. It is important for schools to take parents at their word about their communication needs if they request language assistance. School districts must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. 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 training in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

The following are the facts relevant to these allegations:

### Background

In August 2016, Counsel asserted in its complaint against the District that the Parent and Student are newly arrived immigrants to the United States in November 2014; their native and primary language is Spanish, and they do not understand English. The Student suffers from Acute Lymphoblastic Anemia (ALL), a seizure disorder, and an intellectual disability.

According to the complaint, in February 2015, the District transferred the Student to a special day class at the School because of his special needs. The complaint states that in February 2015, April 2015, and November 2015, the District convened IEP meetings, but failed to discuss the English Language Development (ELD) services that Student would receive to meet his individual needs. Further, the Parent asserts that she requested a translated document of all of these IEPs, but did not receive translated copies.

The evidence gathered by OCR from the District included copies of the Student's April 2015, October 2015, and November 2015 IEPs. The goals and objectives for the Student's ELD were not discussed in these IEPs. Also, these documents indicated that the Parent requested a translated copy of all of the IEPs. The District provided OCR with a translated version of these IEPs.

### Winter and Spring 2016

The complaint also alleges that on February XX, 2016, the District convened another IEP meeting; during this meeting, the Parent brought a social worker and advocate, both of whom are fluent in English and Spanish. It is asserted that the District's assigned interpreter did a poor job interpreting, as she could not translate common words used, and could not translate the discussion regarding the Student's one-on-one aide. During this meeting, the IEP team held several long discussions in English, and the interpreter only briefly summarized these discussions while leaving out vital information. The Parent's advocate and social worker reminded the interpreter to interpret the meeting, and not to merely summarize it; she did not do so, and the social worker and advocate took over interpretation.

During this February 2016 IEP meeting, the IEP team again failed to discuss the ELD services the Student would receive to meet his individual needs. The IEP documentation notes that due to the Student's lack of participation in classroom instruction, he was not participating in the directed English language instruction. The Parent requested a translated document of this IEP, but alleges that she did not receive a translated copy.

The February 2016 IEP also included an attachment prepared by the Parent, where she states that she wants "to make sure that it is clear to all staff that [the Student] is a monolingual Spanish speaker. I am very concerned that in the year that [the Student] has been in school he has not made any academic progress." She also indicated that she was not provided with a "copy of the IEP in Spanish and as such I do not know exactly what the document says."

According to the complaint, on March X, 2016, the District convened another IEP meeting, and the same interpreter again provided her with short summaries of the meeting's discussion. The Parent again requested a translated document of this IEP, and alleges that again she did not receive it. The complaint asserts that the Parent is unable to fully participate in IEP team meeting discussions because of the lack

of adequate interpretation at these meetings, and that without receiving translated versions of the Student's IEP documents, the Parent has been unable to review the Student's services and placement or read the Student's current levels of performance or goals.

The evidence gathered by OCR from the District included copies of the Student's February 2016 IEP, which did not include a discussion of the Student's goals and objectives for his ELD. This IEP indicated that the Parent requested a translated copy of this IEP. The District provided OCR with a translated version of this IEP.

The District also provided OCR with a copy of the Student's March 2016 IEP; in this IEP, the Student's Present Level of Performance with respect to his ELD, and Goals and Objectives for the Student's ELD were discussed. These Goals and Objectives included the Student identifying 15 common body parts. This IEP included an attachment prepared by the Parent, where she indicated, among other things, that she does not believe she received adequate interpretation during this meeting. She stated that she would only receive a brief one to two sentence summary of what was discussed over a few minutes. This IEP also indicated that the Parent did not request a translated copy of the IEP.

Lastly, the District gave OCR a copy of the Student's June 2016 IEP, which discussed the Student's Present Level of Performance with respect to his ELD, and included Goals and Objectives for the Student's ELD (identifying 15 common body parts). The IEP indicates that the Parent did not request a translated copy of the IEP.

#### Fall 2016

The District also submitted to OCR a copy of a Final Settlement Agreement and Release ("Agreement") between the Parent and the District. This Agreement, which was fully executed on September XX, 2016, resolved a case that the Parent filed with the Office of Administrative Hearing. The Parent was represented by Counsel.

In the Agreement, the District agreed to, among other things, fund an Independent Bilingual Psycho-Educational Evaluation (IEE), which will include an IQ score and assess cognition, academics, and social emotional status of the Student. Further, in lieu of any pending IEE's, the District agreed to fund an independent Language and Speech assessment of the Student, and that this assessment will be considered at a future IEP meeting. The Agreement also indicated that in lieu of the placement and services offered at Student's IEP dated June X, 2016, the District agrees to offer the Student placement at a District high school in a Special Day program with home to school transportation services. Finally, the Agreement includes a waiver of "any and all educational claims related to, or arising from, Student's educational program at District schools and Charter schools for whom the District is the Special Education Local Plan Area (SELPA) through the date of full execution of this Agreement."

Most recently, an IEP meeting was held for the Student on October XX, 2016. This most recent IEP discussed the Student's Present Level of Performance with respect to his ELD, and included Goals and Objectives for the Student's ELD (identifying 15 common body parts). This IEP indicated that, in accordance with the Agreement, once the District received all completed IEE assessment reports (Bilingual Psychoeducational Evaluation and the Language and Speech Assessment), an IEP meeting will be held to review and consider the findings. The IEP also stated that the Parent requested a translated copy of the IEP. The District provided OCR with a translated copy of this IEP in Spanish.

## **Analysis**

### **Allegation 1:**

The Agreement that the District submitted to OCR was executed on September XX, 2016 (after this OCR complaint was filed). As described above, the Agreement details the steps the District has agreed to take, including to fund an Independent Bilingual Psycho-Educational Evaluation and an independent Language and Speech assessment of the Student. The findings of these evaluations and assessments will be reviewed and considered at a future IEP meeting. The Agreement also included a waiver of "any and all educational claims related to, or arising from, Student's educational program at District schools and Charter schools for whom the District is the Special Education Local Plan Area (SELPA) through the date of full execution of this Agreement."

According to Section 110(e) of OCR's Case Processing Manual (CPM), OCR will close a complaint if it receives credible information that the complaint allegations have been resolved, and there are no systemic allegations. OCR has determined that the steps the District agreed to take in the Agreement, and the Agreement's waiver provision, resolve Allegation 1 of this complaint.

### **Allegations 2 and 3:**

With respect to Allegations 2 and 3, the District provided OCR with copies of the Student's IEPs from 2015 and 2016. OCR is concerned that the Goals and Objectives for the Student's ELD were not discussed until the March 2016 IEP. Further, while the District provided OCR with translated copies of the IEPs in which the Parent requested translation, OCR is concerned that the Parent indicated that she did not receive any of these translated documents. Lastly, OCR is concerned that the Parent raised her concerns about not receiving adequate interpretation at the Student's IEP meetings.

Prior to the completion of OCR's investigation, the District informed OCR it was amenable to resolving the complaint. OCR and the District entered into the attached agreement to resolve the complaint. Under the agreement, the District will provide the Parent with translated copies of all IEPs (including any accompanying Behavioral Support Plans) for the Student in which the Parent requested a translated version in Spanish since April 2015 to present; and a training to all appropriate School administrators and staff about the District's Title VI obligations with respect to EL students and LEP parents, including special education and EL services that must be provided to each special education EL student in a manner appropriate to the student's individual needs.

Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Title VI, Title II, and Section 504.

## **Conclusion**

This concludes OCR's investigation of the 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. OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently.

This letter sets forth OCR's determinations in an individual OCR case. It 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 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 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Naghmeh Ordikhani, Civil Rights Attorney, at (415) 486-5588.

Sincerely,

/s/

Anamaria Loya  
Chief Attorney

enclosure