



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

July 12, 2018

Dr. Baron R. Davis
Superintendent
Richland County School District 02
124 Risdon Way
Columbia, South Carolina 29223

RE: OCR Complaint No. 11-18-1109
Resolution Letter

Dear Dr. Davis:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on January 9, 2018 against Richland County School District 2 (the Division). The Complainant filed the complaint on behalf of a national origin-minority parent (the Parent) with limited proficiency in the English language. The complaint alleges that the District discriminated against the Parent on the basis of national origin. Specifically, the complaint alleges that the District failed to provide an interpreter competent to provide effective interpreter services at a special education meeting for the Parent's child held on **XXXXXX**, 2017.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI.

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

Background

The Parent, who is Hispanic and has limited proficiency in the English language, has two children enrolled in St. John Neumann Catholic School (the School) in first and third grade. The School is a private school but it is required to use the services of the Division for special education services. On **XXXXXX**, 2017, the parent participated in a meeting with Division staff to discuss whether or not her youngest child should be referred for an evaluation to determine if

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she is eligible for special education or related services. An interpreter for the Division attended the meeting to provide interpreter services. The Complainant also assisted the Parent in obtaining the services of a private interpreter to attend the meeting with her on **XXXXX**.

Legal Standard

The Title VI regulation, at 34 C.F.R. § 100.3(a) and (b), provides that a school district may not exclude persons from participation in its programs, deny them any service or the benefits of its programs, or subject them to different treatment on the basis of race, color, or national origin.

The Departmental Policy Memorandum issued on May 25, 1970, entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin” (the May 1970 memorandum), 35 Fed. Reg. 11,595, clarifies OCR policy under Title VI on issues concerning the responsibility of schools to provide equal educational opportunity to limited English proficient (LEP) national origin minority students. The May 1970 memorandum states that school districts must adequately notify LEP 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.

Districts are required to provide language assistance for LEP parents with appropriate competent staff. Competency requires more than self-identification as bilingual. Interpreters must be skilled at interpreting between the languages and have knowledge in both languages of any specialized terms or concepts peculiar to the entity’s program or activity and of any particularized vocabulary and phraseology used by the LEP person. Additionally, Districts should ensure that its interpreters are trained on the role of an interpreter, the ethics of interpreting, and the need to maintain confidentiality.

Analysis

The complaint alleges that the Division interpreter changed meaning, interjected her opinion, and omitted information during the meeting, thereby denying the Parent meaningful access. OCR interviewed the private interpreter who attended the **XXXXX**, 2017 meeting with the Parent and the Division interpreter who served as the official interpreter for the Division during the meeting. There is no dispute that the private interpreter was instructed at the start of the meeting that only the Division interpreter would provide interpreter services during the meeting. Thus, the private interpreter listened during the meeting but did not participate.

The private interpreter told OCR that she observed the Division’s interpreter during the meeting omitting information, interjecting to offer her opinion, and altering meaning. For example, the private interpreter explained that while the Division interpreter was interpreting for the Parent in Spanish, the other Division staff in the meeting was carrying on side conversations, conversations that were never interpreted for the Parent. The Division interpreter acknowledged that she is sometimes aware of side conversations going on among Division staff while she is interpreting for a parent. When this happens, she acknowledged that she cannot interpret the side conversations for the parent. She could not recall whether or not she observed side conversations at the **XXXXX** meeting.

The private interpreter also told OCR that she observed the Division interpreter interjecting to offer her opinion based apparently on her understanding of reading development in Spanish speaking children generally. The Division interpreter informed OCR that she serves in two different positions within the Division. She is an interpreter and a foreign language liaison. As foreign language liaison, she serves as an advocate for Hispanic families. She further explained that she may serve in both roles simultaneously. For example, in a meeting where she is serving as an interpreter regarding a family she knows through her role as foreign language liaison, she told OCR that on those occasions it is appropriate for her share her opinion and express concerns, in addition to interpreting. Although she had not worked with the Parent in her role as foreign language liaison prior to the XXXXX, 2017 meeting, she acknowledged that she frequently plays this dual role at meetings. The Division provided OCR with written “Guidelines” for interpreters and translators. The guidelines require, among other things, that interpreters remain neutral and impartial at all times, avoiding omissions, alterations, or expressing opinions. The Division interpreter told OCR that she received the guidelines via email but had not received any training on them. She also acknowledged that she is unable to act entirely consistent with these guidelines when she is serving simultaneously as an interpreter and foreign language liaison in a meeting.

Although there is a dispute of fact over what occurred at the XXXXX, 2017 meeting, based on this information, OCR identified compliance concerns regarding the Division’s provision of interpreter services generally. Specifically, OCR is concerned that Division staff serving as an interpreter and simultaneously as foreign language liaison or advocate for families with limited English proficiency presents a conflict of interest. An interpreter serving in this dual role cannot maintain the neutrality and impartiality required for effective interpreter services necessary to ensure meaningful access as required by Title VI. The information gathered also raises a concern that limited English proficient parents may be denied meaningful access when staff engages in substantive side conversations that are not conveyed to the parent in a language the parent can understand.

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on July 11, 2018 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the Division’s implementation of the Agreement until the Division has fulfilled the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the Division’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 Division 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, 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact Sara Clash-Drexler, the OCR attorney assigned to this complaint, at 202-453-5906 or sara.clash-drexler@ed.gov.

Sincerely,

Michael Hing
Team Leader, Team I
District of Columbia Office
Office for Civil Rights

Enclosure

cc (via email): Ms. Kimberley K. Blackburn, counsel for the Division