



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Diane M. Lease, Esq.
Chief Legal Counsel
Ohio Department of Education
25 South Front Street, MS 707
Columbus, Ohio 43215-4183

Re: OCR Docket #15-15-1426

Dear Ms. Lease:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Ohio Department of Education (ODE) with the U.S. Department of Justice, which referred the complaint to the U.S. Department of Education (Department), Office for Civil Rights (OCR), on September 24, 2015. The complaint alleged discrimination on the basis of national origin. Specifically, the complaint alleged that ODE fails to provide important special education documents in languages other than English on its website.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100 (Title VI). Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, ODE is subject to this law.

Based on the complaint allegation, OCR opened an investigation of the following issue: whether ODE violated the regulation implementing Title VI, at 34 C.F.R. § 100.3(a) and (b), which provides, in relevant part, that recipients of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of national origin, exclude persons from participation in their programs, deny them any service or the benefits of their programs, or subject them to separate treatment.

Summary of OCR's Investigation

In its investigation to date, OCR interviewed the Complainants and reviewed documentation submitted by both the Complainants and ODE. The Complainants asserted that they based their allegations upon the experiences of numerous parents from different school districts in and around Columbus, Ohio, who are limited English proficient (LEP).

According to ODE, the five most commonly spoken languages, other than English, in the State of Ohio for all LEP students are as follows (numbers denote number of LEP students): Spanish/Castilian (14,386); Somali (3,414); Arabic (2,974); Chinese (1,006); and Japanese (857).

The Complainants alleged that ODE has failed to provide important special education documents in languages other than English through its website. They stated that, although parents of students with disabilities are supposed to have available to them a robust system of procedural safeguards (e.g., the ability to file a state complaint, request an impartial due process hearing, or request a facilitated Individualized Education Program (IEP) meeting or mediation), parents who do not speak English are unable to access these procedures because the online complaint forms and requests for remedies are only available in English. The Complainants stated that parents who speak English can access complaint information and forms online; however, the parents who are the subject of this complaint cannot do so.

In response to OCR's data request, ODE submitted evidence that it provides some translated information to LEP parents. ODE has contracts in place to provide translation services to the agency as needed. ODE's procedural safeguards notice to parents entitled "Whose IDEA is This?" has been translated into the following languages: Albanian, Arabic, Chinese (simplified), Chinese (traditional), Croatian, Gujarati, Japanese, Korean, Russian, Spanish, Somali, Ukrainian, Urdu, and Vietnamese. According to ODE, the translated document includes a number of translated forms for the parents of students with disabilities, including a request for mediation, a complaint form, a due process complaint and request for a due process hearing form, and a due process and/or complaint withdrawal form.

OCR reviewed ODE's home, special education, and dispute resolution web pages on April 11, 2016. At that time, the web pages contained no material in a language other than English and no apparent option for translation of the content into a language other than English. As of August 22, 2016, these pages still contained no material in other languages or an option/method for translation of the page content into a language other than English. However, the dispute resolution web page included a link to some forms in other languages. The forms accessible through the "other languages" link included ODE's Mediation Information Sheet, Direct Request for Mediation Form, Facilitation Information Sheet, Direct Request for Facilitation Form, Formal Written Request Form, and Due Process Complaint and Request for a Due Process Hearing Form. When the reader clicked on the "other languages" link, which was labeled in English and no other

language, the reader was directed to another page that provided the forms in what ODE represents as the 11 “top foreign languages” in Ohio. On ODE’s web page entitled, “Parent’s Guide to the Individuals with Disabilities Education Improvement Act (IDEA) of 2004”, the 14 translated versions of “Whose IDEA is This?” were available, although that web page was completely in English.

On July 7, 2016, prior to the completion of OCR’s investigation, ODE asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). OCR determined that it is appropriate to resolve this complaint with an agreement prior to the completion of the investigation.

Applicable Regulatory Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which Title VI applies. The Title VI implementing regulation, at 34 C.F.R.

§ 100.3(b)(1)(i) and (iv), prohibits recipients from, on the basis of race, color, or national origin, excluding students from participating in, denying students the benefit of, or otherwise subjecting students to discrimination under any program, or restricting students in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under its program. Section 100.3(b)(2) of the regulation 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 issued a memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin” (35 Fed. Reg. 11,595). The memorandum clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to LEP national origin minority students.

The May 25, 1970, memorandum also provides 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. Further, OCR considers the issue of meaningful communication with LEP parents in a manner consistent with Executive Order 13166, “Improving Access for Persons with Limited-English Proficiency,” issued August 11, 2000 (Executive Order 13166). The U.S. Department of Justice (DOJ) on June 18, 2002, issued “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited-English Proficient Persons,” which provides specific guidance about the method and manner (including translation and interpretation) for delivering information to LEP individuals in a timely and effective manner.

School districts and state education agencies (SEAs) 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 program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents. At the school and district levels, this essential information includes but is not limited to information regarding: language assistance programs, special education and related services, IEP meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in district or school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, magnet and charter schools, and any other school and program choice options.

School districts must develop and implement a process for determining whether parents are LEP and what their language needs are. SEAs and school districts must provide language assistance to LEP parents effectively with appropriate, competent staff or outside resources. It may not be sufficient for the 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. In addition, school districts should ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

OCR will investigate issues concerning school district communication with LEP parents by considering, among other things, whether: (a) SEAs and school districts develop and implement a process for determining whether parents are LEP, and evaluate the language needs of these LEP parents; (b) SEAs and school districts provide language assistance to parents or guardians who indicate they require such assistance; (c) SEAs and school districts ensure that LEP parents have adequate notice of and meaningful access to information about all school district or SEA programs, services, and activities; and (d) SEAs and school districts provide free qualified language assistance services to LEP parents.¹

Resolution and Conclusion

As noted above, prior to the completion of OCR's investigation, ODE expressed interest in resolving the allegations in the complaint pursuant to Section 302 of OCR's CPM, which provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of ODE, nor does it constitute a determination by OCR that ODE has violated any of the laws that OCR enforces. On October 26, 2016, ODE submitted

¹ For more information, see, e.g., English Learner Students and Limited English Proficient Parents, Dear Colleague Letter from Catherine E. Lhamon, Assistant Secretary for Civil Rights (OCR), and Vanita Gupta, Acting Assistant Attorney General for Civil Rights (DOJ) (January 5, 2015), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

the enclosed signed resolution agreement (the Agreement) to OCR. The provisions of the Agreement are aligned with the complaint allegations and the information obtained to date during the investigation and are consistent with applicable regulations. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor ODE's implementation of the Agreement. Should ODE fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure its compliance with the Title VI regulation.

This concludes OCR's investigation of the complaint and should not be interpreted to address ODE'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.

Please be advised that ODE 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 harmed individual may file a complaint alleging such treatment.

The Complainants may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving ODE's first monitoring report by December 31, 2016. For questions about implementation of the Agreement, please contact Mr. Michael Todd, who will be monitoring ODE's implementation, by e-mail at Michael.Todd@ed.gov or by telephone at (216) 522-7644. For questions about this letter, please contact Sacara Martin, Supervisory Attorney/Team Leader, at (216) 522-7640.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure