



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

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REGION XV  
MICHIGAN  
OHIO

Wanda T. Lillis, Esq.  
Associate Legal Counsel  
Columbus City Schools  
270 East State Street  
Columbus, Ohio 43215

Re: OCR Docket #15-15-1428

Dear Ms. Lillis:

This letter is to inform you of the disposition of the above-referenced complaint filed against Columbus City Schools (the District) 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 and disability. Specifically, the complaint alleged that the District:

1. fails to provide parents and students who are limited-English proficient (LEP) with qualified interpreters at meetings with school officials, teachers, and other educational providers, including but not limited to meetings concerning special education services; and
2. fails to provide to LEP parents and students documents that are regularly and routinely a part of both general education and special education in a language they can understand.

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. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department, and for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its

implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following issues:

- whether the District 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;
- whether the District failed to provide LEP parents and guardians of students with disabilities a meaningful opportunity to provide input into the students' placement decisions, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35(c); and
- whether the District failed to provide LEP parents and guardians a system of procedural safeguards that includes notice, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, in violation of the Section 504 regulation at 34 C.F.R. § 104.36.

### **Summary of OCR's Investigation**

In its investigation to date, OCR interviewed the Complainants and parents of District students, and reviewed documentation submitted by the Complainants and the District. The parents who provided information relevant to the complaint have children with disabilities that attend six different schools within the District, including both elementary and middle schools. All of the parents stated that they are LEP and that their primary language is Spanish.

An undated copy of a presentation provided by the District states that, from 1982 to 2015, the number of "English as a Second Language (ESL) students" in the District grew from 77 to over 7,000 students. It states further that the District's LEP students are primarily Somali and Latino, with the newest group of students being Bhutanese-Nepali. According to the 2015-2016 Ohio Department of Education (ODE) Report Card for the District, its enrollment was 49,696, with 6,437 (13.0%) LEP students. The ODE data indicated that the District identified 8,140 total District students (16.4%) as students with disabilities.

The Complainants generally alleged that LEP parents are unable to speak with school staff when they go to their children's schools, that parents are unable to understand robo-calls from the schools, and that the District fails to provide appropriate interpreter services for important meetings (e.g., Individualized Education Program (IEP) meetings).

LEP parents of District students provided examples of the lack of interpreters as well as the lack in quality of interpreters. XXXXX parents said there are no interpreters available over the telephone at their children's schools. XXXXX parent gave multiple examples of XXX XXX XXXX XXX XXXXXXX XX X XXXXXXX XXXXX and XXX was not able speak to anyone at the school in a timely manner. XXX also noted that automated telephone messages sent by the school are in English and that there are no interpreters present at Parent Teacher Association meetings. XXXXX parent said the District did not provide an interpreter for XXX during a XXXXXXXX 2015 IEP meeting. A XXXX parent noted that XXX child had an "expired" IEP for approximately seven weeks because the school could not find an interpreter for the IEP meeting in the XXXX of 2015. When an interpreter was first provided, over the telephone, XX parent said XXXX was unable to understand the interpreter and the interpreter was not available to see the documents and help XX understand them. As a result, XXXX XXXXXXXX another meeting with an interpreter to be physically present, which resulted in an additional delay. A XXXXX parent noted XX concern that, compared with English-speaking parents, XXXX loses time during parent-teacher meetings due to time lost in interpreting. A XXXXX parent stated that XXXX did not think the interpreters at XXXX child's IEP meetings understood the terms used by the IEP team, including at a XXXXX 2016 IEP meeting. XXXX said, when XXXX physically goes to the school, they call XXXX child to serve as the interpreter. XXXX of the parents also expressed concern regarding the District's use of teachers for translation, with respect to bias and the insertion of opinion into their translations.

In response to OCR's data request, the District provided OCR with some evidence that it provides interpreter/translation services to LEP parents, including copies of its ESL service center phone logs. The District provided OCR with a copy of the District's ESL Handbook and a link to its ESL web page—both of which include information regarding the ESL call center. With respect to the ESL web page, however, although some of the information provided through this page can be translated by a user into other languages using Google Translate, a number of linked pages and documents are only provided in English. The Handbook lists the availability of Spanish, Arabic, and Nepali translation at the District; however, this is inconsistent with the website, which lists the availability of four languages (Spanish, Arabic, Somali, and Nepali). The District also provided OCR with information regarding its Parent and Family Services Team, which includes a Latino Parent Liaison, four call center interpreters, one member listed as "school support/call center interpreter," and an "ESL Psychologist for the District." Other materials submitted by the District list two ESL department staff members (that speak English and Spanish) that provide interpreter services at scheduled meetings and list contracted translation agencies that provide interpreter services at scheduled meetings when ESL staff is not available or a request is made in a language for which the District does not have an interpreter.

The Complainants also alleged that the District sends general paperwork (e.g., parent/teacher conferences, school notices) home in English and fails to translate other important documents, particularly those relevant to special education services (e.g., IEPs,

Evaluation Team Report, Manifestation Determination Review decisions, Prior Written Notice). In addition to those documents, LEP parents stated that they are not provided additional documents in Spanish, including Section 504 plans, IEP and Section 504 meeting notices, IEP progress reports, consent to evaluate forms, discipline notices, mediation agreements, and/or report cards.

In its narrative response to OCR's data request, the District stated that parent information is translated when a school/department requests a translation. The requesting department will contact the District's communication department, which then contacts the ESL department with a deadline and a copy of the document that is being requested for translation. The District provided OCR with copies of various documents translated into Spanish, including but not limited to enrollment documents, school schedules, grade reports, special events notices, health forms, and emergency notifications. It was not clear from the District's data production where or how all of these translated documents might be made available to parents. The District directed OCR to its ESL web page, which does include some documents translated into Spanish, French, Somali, and/or Nepali. OCR notes that not all of the translated forms are provided in all of the languages. The District provided OCR with copies of individual students' IEPs and/or Section 504 plans in English.

On April 19, 2016, prior to the completion of OCR's investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM).

### **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) 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.<sup>1</sup>

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<sup>1</sup> 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

The regulation implementing Section 504, at 34 C.F.R. § 104.35, requires recipient school districts to conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education. The regulation also requires recipient districts to reevaluate students with disabilities periodically and before any subsequent significant change in placement.

The Section 504 regulation, at 34 C.F.R. § 104.35(c), also provides that, in interpreting evaluation data and in making placement decisions regarding that student, a recipient shall, in relevant part: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options. As persons uniquely knowledgeable about the child, parents should be given a meaningful opportunity to provide input into placement decisions.

Further, the regulation implementing Section 504, at 34 C.F.R. § 104.36, requires recipient districts to establish and implement, with respect to actions regarding the identification, evaluation or educational placement of persons with disabilities, a system of procedural safeguards, including notice of these decisions to the parent or guardian, an opportunity for the parent or guardian to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

### **Resolution and Conclusion**

As noted above, prior to the completion of OCR's investigation, the District 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 the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. On September 23, 2016, the District submitted 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 the District's

implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure the District's compliance with the Title VI and Section 504 regulations.

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.

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 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 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 the District's first monitoring report by November 30, 2016. For questions about implementation of the Agreement, please contact Erin Barker-Brown, who will be monitoring the District's implementation, by e-mail at Erin.Barker-Brown@ed.gov or by telephone at (216) 522-4978. 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