



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 24, 2017

Susan Oppenheimer, Esq.
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

Re: OCR Docket #15-15-1431

Dear Ms. Oppenheimer:

This letter is to inform you of the disposition of the above-referenced complaint filed against South-Western 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, interviewed parents of District students identified by the Complainants, and reviewed documentation submitted by both the Complainants and the District. The parents interviewed have children with disabilities placed in special education by the District. The parents stated that they are LEP and that their primary language is XXXXX.

According to District documentation, the District has approximately 2,806 English language learner (ELL) students, comprising approximately 13% of the K-12 student population. Approximately 58% of those ELL students are at the elementary level. Although there are 60 languages spoken by the ELL student body, approximately 56% of the District's ELL population is Spanish-speaking. The second-most prevalent language spoken by ELL students is Somali, with 17% of the ELL students speaking that language. 551 students, or approximately 20% of the ELL student body, are identified as needing special education services. Of those students, approximately 63% are Spanish speakers, with approximately 20% speaking Somali.

District documentation demonstrated that the District relies on bilingual assistants, who are employed by the District, for the majority of their Spanish and Somali translation and interpretation needs. For communication with parents who speak less prevalent languages, the District contracts with outside agencies to meet their interpretation/translation needs. The Complainants and the parents interviewed alleged that the District's provision of an interpreter, specifically in the context of communicating with the parents about their children's special education, did not sufficiently replace the necessary translation of vital documents such as their students'

Individualized Education Programs (IEPs) and Evaluation Team Reports (ETRs). Further, the Complainants alleged that LEP parents do not receive written copies of disability-related documentation from the District, including IEPs and ETRs. During their interviews, the parents explained that the District provides interpreters at IEP meetings, and that the interpreters review the documents with them. One parent stated that the interpreter at her students' IEP meetings would translate the document for her line by line. The other parent stated that the interpreter translated large portions of the IEP, but that there was about 20% that remained untranslated.

In response to OCR's data request, the District submitted some documentation indicating that the District collects information for the identification of LEP parents and ELL students. Documents, including services logs and schedules, submitted by the District showed some evidence that the District provided interpreters for meetings with LEP parents about special education services and at parent-teacher conferences. District documents included job descriptions for bilingual assistants that did not require any specialized interpreter services/translation training, and required only language fluency and a high school diploma for application for the job.

The District provided OCR with a number of blank form documents that it had translated into Spanish and Somali, including enrollment forms, ESL program permission and continuation forms, an ESL level services change form, consent forms for health records, IEP forms, transportation forms, and forms such as a Section 504 plan reevaluation form, and a notification of Section 504 conference. The District provided copies of blank ETR forms and IEP forms written in Spanish but did not provide copies of any completed IEPs that had been translated into Spanish.

The District's position statement stated that the District does not routinely translate IEPs and special education-related documents into other languages, due to the cost and difficulty of translations. The District further stated that it has translated such documents at the request of parents but does not routinely translate them. However, the Complainants alleged that the parents had requested translated IEPs and did not receive them. Moreover, despite OCR's request that the District provide translated IEP documents for the students identified as examples in this complaint, the District provided copies of these students' IEP documents in English only.

On March 3, 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). Based on the above information, OCR determined that there is sufficient cause for a Title VI compliance concern and that it is appropriate to resolve this complaint with an agreement.

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.

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 May 19, 2017, 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.

The District submitted an initial monitoring report to OCR on May 19, 2017, including some of the documentation due under the Agreement by August 17, 2017. OCR will review that information and submit a response to the District under separate cover. OCR looks forward to receiving the District's monitoring report due under the Agreement by May 31, 2017. For questions about implementation of the Agreement, please contact Aubrie Wancata, who will be monitoring the District's implementation, by e-mail at Aubrie.Wancata@ed.gov or by telephone at (216) 522-4711.

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