



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

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REGION XV  
MICHIGAN  
OHIO

November 24, 2014

Marquita Sylvia, Esq.  
Assistant General Counsel  
Detroit Public Schools  
3011 West Grand Boulevard, Suite 1002  
Detroit, Michigan 48202

Re: OCR Docket #15-12-1258

Dear Ms. Sylvia:

This letter is to notify you of the disposition of the above-referenced complaint filed on July 20, 2012, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Detroit Public Schools (the District) alleging discrimination based on national origin. Specifically, the complaint alleged that the District did not provide a student (the Student), who is limited-English proficient, appropriate educational services with respect to his limited-English proficiency from November 2011 until the end of the 2011-2012 school year. The complaint also alleged that the District discriminated against Latino parents by not communicating with them in their native language, Spanish, about the principal selected for the Munger PreK-8 school for the 2012-2013 school year.

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 at 34 C.F.R. Part 100. 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, the District is subject to Title VI; thus, OCR had jurisdiction to investigate this complaint.

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

- whether the District discriminated against a limited-English proficient student on the basis of national origin by failing to provide the student an equal opportunity to participate in the benefits of the District's education program in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3; and

- whether the District discriminated against limited-English proficient parents by failing to meaningfully communicate school-related information to them in a language they can understand in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3.

During the investigation to date, OCR interviewed the Student's parent and a number of District administrators. OCR also reviewed documents and information provided by the Student's parent and the District and obtained information from the Michigan Department of Education. Prior to the completion of OCR's investigation, however, the District expressed an interest in resolving this complaint pursuant to Section 302 of OCR's Case Processing Manual (Manual). The District submitted the enclosed resolution agreement, described below, to resolve this complaint.

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

- **Alleged Failure to Provide the Student Alternate Language Services**

During the 2011-2012 school year, the Student attended the District's Logan Elementary School (Logan) in the XXXXXX grade. The Student's home language is Spanish. The Student's parent told OCR that the Student had been receiving language services through the District's bilingual program, but the bilingual teacher for his class started a new position in November 2011, and the District did not provide a bilingual teacher for the rest of the school year. She stated this resulted in the Student not receiving the language services he needed.

The District offers three bilingual programs: Transitional Bilingual Education (TBE), Dual Language Education (DLE/Immersion), and English as a Second Language (ESL). According to the District, the Student was participating in an ESL program at Logan. The District describes its ESL program as "a program of techniques, methodology and special curriculum designed to teach ELL students English language skills, which may include listening, speaking, reading, writing, study skills, content vocabulary, and cultural orientation." The District states further that "ESL instruction is in English with little use of native language." The District told OCR that teachers in the District's ESL program must be certified and hold an additional bilingual or ESL endorsement.

The District provided information indicating that, while the Student and his classmates began the 2011-2012 school year with a language program teacher who was certified bilingual, that teacher left in November 2011 and a new teacher without bilingual certification was placed in the classroom for the remainder of the school year. Information provided by the District indicates that the Student was provided with a teacher who was certified bilingual for the 2012-2013 school year while he was attending Munger Elementary School. The Student no longer attends school in the District.

One District administrator stated that she did not know why a teacher without a bilingual certification was placed in the Logan classroom in November 2011. The principal that placed the teacher is no longer with the District, so the administrator did not know what kind of staffing request the principal may have submitted. She did not think the District maintained paperwork related to such a request. The administrator stated that the request should have been for an

ESL-certified teacher. From the data the administrator had seen from the 2011-2012 school year, she said it looked like the District had enough ESL/bilingual teachers to fill the classrooms requiring such a certification. She also stated that most of the affected students from Logan are now at Munger, as Logan closed after the 2011-2012 school year.

The District informed OCR that the Michigan Department of Education (MDE) conducted an audit of the District's ESL program and, as a result, the District had been placed on an improvement plan in July 2013. As a result of the MDE audit, the District said that it now has an alternative language plan for placing students in ESL classrooms. The District explained that, while the budget determines how many ESL teachers are placed at each school based on its population, the improvement plan now requires the District to look at each school's proficiency level to make sure the school has the services needed. The District said the plan specifies teacher qualifications: certified teacher and an additional bilingual or ESL endorsement. The District provided OCR with a copy of the MDE audit.

The District provided OCR with information indicating that, during the course of OCR's investigation, the District sent a letter to the parents of the students from the relevant XXXXXX-grade class at Logan that are still attending school in the District, offering those students services via two afterschool programs (a bilingual high needs program and an enrichment program in science, engineering, arts and mathematics) at no cost. Translated versions of the letter were issued to limited-English proficient (LEP) parents. The District stated that none of the students from the Logan class availed themselves of that opportunity.

X---PARAGRAPH REDACTED---X

### **Alleged Failure to Communicate with LEP Parents**

In June 2012, the District sent parents/guardians of Logan students a letter regarding the individual who was selected as the new principal for Munger for the 2012-2013 school year. This letter was sent because the District was closing Logan effective the 2012-2013 school year, and the Logan students would be attending Munger. The District acknowledges that letter went out only in English. During the 2011-2012 school year, 61% of Logan students were identified as LEP. In May 2013, the District sent the letter, translated in Spanish, to parents/guardians of Munger students. OCR reviewed a copy of the May 2013 letter. The Student's parent confirmed to OCR that she received a copy of the letter in Spanish; however, she asserted it was not useful as it came a year late. She told OCR that, while the Student was at Logan, translated versions of all other District communications had been provided. She asserted that, after the Student went to Munger, there was no one at that school who spoke Spanish and no documents were translated.

OCR obtained information from the District regarding its policies and procedures for ensuring that the District is meaningfully communicating school-related information to LEP parents/guardians in a language they can understand, including but not limited to the translation of documents and provision of interpreters. The District initially told OCR that it did not have a written District-wide policy or procedure for providing interpreter and/or translation services to LEP parents. The District explained that such services are currently handled at the school-level. The District indicated that some, but not all, District- and school-level parental communication is

translated into one or more of the five most prevalent languages spoken in the District (Spanish, Arabic, Romanian, Bengali, Hmong). The District provided examples of some District documents that have been translated, including its Home Language Survey and enrollment form.

In June 2014, the District submitted to OCR what it asserted to be its plan for communication with LEP parents. The document was titled “Current Translation & Interpretation Process at Central Office and Schools.” This document indicated that staff in need of interpreter services for a parent meeting or for document translation were to call the District’s Office of English Learners and to e-mail the District’s Bilingual Director. The document stated that one District staff person had been identified to provide Bengali language services, “if his schedule permits,” and that the Office of English Learners could not provide any assistance if the language needed was Arabic. The document suggested schools use Google Translate to translate documents or to “find an available staff or community member who speaks the language,” among other possible avenues.

The District informed OCR that it does not have a written District policy for identifying parents that need translation/interpreter services or a formal procedure or document or other communication that directs a LEP parent to a specific contact person or District office if the parent needs interpreter/translation services. The District stated that there is also no District policy or procedure in place to inform staff of the need to provide interpreter/translation services to LEP parents. There is no District-wide training for staff in how to communicate with LEP parents or in how to use interpreter services when communicating with LEP parents. District witnesses were not able to provide information regarding the extent of the translation services available on the District’s website, although they noted that some translated documents (e.g. field trip permission slips) are available.

The District indicated at one point during the investigation that it was in the process of entering into a contract with a private company to provide translation and interpreter services. As of the date of this letter, the details of the contract (e.g., will it include website content, services other than in the five most prevalent languages in the District, etc.) had not been provided to OCR. In addition, the District’s compliance plan to resolve MDE’s audit findings includes a requirement that the District develop procedures “for oral/written translations at code of conduct hearings, IEPs, other Board of Education activities in a language that parents can understand.” However, the District’s implementation report was due to MDE August 30, 2013, but as of October 2014 the District had not yet submitted a plan that MDE would accept under the MDE compliance plan. However, the District did provide a copy to both OCR and MDE in October 2014 of a comprehensive draft plan that it is developing to provide language assistance to LEP students and parents.

OCR also spoke with a small number of principals from different District schools. The administrators were not aware of any written District policy for providing language services to LEP parents, including the District “Current Translation & Interpretation Process” document described above, and none of the administrators interviewed had written policies at their individual schools. While some of the administrators said they could contact the District’s bilingual department for assistance with translation and interpreter services, they identified different administrators as contacts for those services and none of the schools appeared to

provide notice to parents informing them that the District provides translation/interpreter services. One school administrator stated that she is not aware of any interpreter/translation services available through the District's central office, and that District documents come to the school in English and it is the school's responsibility to translate them.

While some of the schools may have some informal process for translation/interpreter services in place, those services are primarily focused on Spanish-speaking students and parents. For example, one school noted that it had a bilingual principal and bilingual and/or ESL-certified teachers available for Spanish-speaking parents, but did not have similarly-certified personnel for its Arabic-speaking population. None of the schools had any training or evaluation program in place for the staff performing translation/interpreter services. With respect to information sent home to parents, some schools said they send out some (if not all) documents in English and Spanish, but not all of the schools could confirm that they do so. Witness information conflicted as to whether documents such as District discipline notices and special education forms go out in English and Spanish. Few documents that go home to families appear to be translated in any languages other than English and Spanish.

Information from school administrators differed with respect to the availability of translated information on or through the District's and/or each school's website. One administrator noted that everything on the District's website for her school is available only in English, whereas other administrators stated that some or all of the information available on the individual school's website is available in English and Spanish. OCR reviewed the websites for a few of the schools with higher percentages of LEP students with a native language of Spanish and, even where some of the information is available in both English and Spanish, not all of the posted documents or information available through links on those websites is available in Spanish.

### **Applicable Legal Standards and OCR Policy**

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.

In determining whether a recipient subjected a student to different treatment on the basis of national origin in violation of Title VI, OCR looks to whether there were any apparent differences in the treatment of similarly-situated students on the basis of national origin. If so, OCR assesses the recipient's explanation for any differences in the treatment of similarly-situated students to determine if the reasons are legitimate or are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student in a manner that is consistent with its established policies and procedures and whether there is any other evidence of discrimination based on 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 Guidance issued on June, 18, 2002, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited-English Proficient Persons* (DOJ Guidance), provides specific guidance about the method and manner (including translation and interpretation) for delivering information to LEP individuals in a timely and effective manner.

### **Resolution Agreement**

As noted above, before OCR completed its investigation of this complaint, the District expressed an interest in resolving this complaint pursuant to Section 302 of OCR's CPM. The District submitted the enclosed resolution agreement to resolve this complaint. OCR will monitor the implementation of the agreement. If the District does not fully implement the agreement, OCR will reopen the investigation and take appropriate action.

### **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. 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 file a private suit in federal court, whether or not OCR finds a violation.

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 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, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The OCR contact person for the monitoring of the agreement is xxx xxxx xxxxxxxxxxxxxxxx who can be reached at xxxxx xxxxxxxxxx If you have any questions about this letter, please contact xxx xxxxxxx xx xxxxxxx xxxxxxxxxxxxxxx xxxxxxxxxxxxxxx xxxxxxxx xx xxxxx xxxxxxxxxxxx

Sincerely,

/s/

Meena Morey Chandra  
Director

Enclosure

cc: Jean-Vierre Adams, Esq.  
General Counsel  
Detroit Public Schools