



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

January 25, 2022

Allison LeClair
Superintendent
Easthampton Public Schools
By email: superintendent@epsd.us

Re: Complaint No. 01-15-1189
Easthampton Public Schools

Dear Superintendent LeClair:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Easthampton Public Schools, which OCR will refer to as the District. The complaint alleged discrimination based on the Parent's national origin (XXXXXXXX) and the Parent's XXXXXXXX (Student's) disability. Specifically, the complaint alleged that the District subjected the Parent to different treatment based on her national origin by failing to communicate with the Parent about her XXXXX (Students') Individualized Education Programs (IEPs) and related services in the Parent's native language (XXXXXXXX) (Allegation 1); and that the District discriminated against the Student based on disability by failing to provide her access to at least one week of her XXXX extended school year program, thus causing her to miss that week of the program (Allegation 2).

As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and the information obtained by OCR during the preliminary investigation that informed the development of the Resolution Agreement.

OCR enforces Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d *et seq.*, 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 U.S. Department of Education. In addition, OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the U.S. Department of Education. Because the District receives federal financial assistance from the U.S.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Department of Education, OCR has jurisdiction over it pursuant to Title VI and Section 504. Because the District is a public entity, OCR has jurisdiction over it pursuant to Title II.

Legal Standards

Title VI

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b)(i)-(ii) provides that a school district may not, on the basis of national origin, exclude persons from participation in its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others.

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 a school district to provide equal educational opportunity to English Language Learner (ELL) students, and obligated a district to take “affirmative steps” to address the language needs of ELL students. The May 1970 memorandum states that school districts must adequately notify Limited English Proficiency (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. This policy concerning the need for effective communication with parents who do not speak English fluently has consistently been upheld by the courts and reiterated in subsequent OCR policy guidance. *See Lau v. Nichols*, 414 U.S. 563 (1974).

Districts have the obligation to ensure that LEP parents/guardians have meaningful access to district- and school-related information in a language they can understand and to adequately notify LEP parents/guardians of information about any program, service, or activity of a district that is called to the attention of non-LEP parents/guardians. A district’s obligation to ensure meaningful communication with LEP parents requires it to provide LEP parents/guardians with oral interpretation and/or written translation of essential information into their primary language where necessary to ensure that they can meaningfully participate in their child’s education. Essential information includes, but is not limited to, special education related documents, notices to parent/guardians, student-parent handbooks, documents concerning enrollment or registration, report cards and other academic progress reports, parent-teacher conferences, and qualified interpreters at special education related meetings.

Districts also must develop and implement a process for determining whether parents/guardians are LEP and what their language needs are. The process should be designed to identify all LEP parents/guardians, including parents/guardians of students who are proficient in English and parents/guardians whose primary language is not common in the district. For example, a district may use a student registration form, such as a home language survey, to inquire whether a parent/guardian requires oral and/or written communication in a language other than English. The school’s initial inquiry should, of course, be translated into languages that are common in the school and surrounding community so that the inquiry is designed to reach parents/guardians in a language they are likely to understand. For LEP parents/guardians who

speak languages that are less common at a particular school, the school may use a cover page explaining in those languages how a parent/guardian may receive oral interpretation of the form and should offer interpreters to ensure parents/guardians accurately report their language communication needs on the form. Schools may also use other processes reasonably calculated to identify LEP parents/guardians, and should identify the language needs of LEP parents/guardians whenever those needs become apparent. It is important for schools to take parents/guardians at their word about their communication needs if they request language assistance and to keep in mind that parents/guardians can be LEP even if their child is proficient in English.

Finally, districts must provide free language assistance to LEP parents/guardians effectively with appropriate, competent staff, or appropriate and competent outside resources. It is not sufficient for the staff merely to be bilingual. For example, some bilingual staff and community volunteers may be able to communicate directly with LEP parents/guardians in a different language, but not be competent to interpret in and out of English (e.g., consecutive or simultaneous interpreting), or to translate documents. 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, 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.

Districts may violate these Title VI obligations if the districts rely on students, siblings, friends, or untrained school staff to translate or interpret for parents/guardians; fail to provide translation or an interpreter at IEP meetings, parent-teacher conferences, enrollment or career fairs, or disciplinary proceedings; fail to provide information notifying LEP parents/guardians about a school's programs, services, and activities in a language the parents/guardians can understand; or fail to identify LEP parents/guardians.

Section 504

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student's plan or as otherwise agreed to by the student's team. If OCR finds that a district has not implemented a student's plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by

the district to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

Background

The Complainant, a XXXXXXXXXXXX, filed a complaint with OCR on behalf of the Student—a XXXXXXXXXXXX—and the Parent on XXXXXXXXXXXX. The Complainant alleged that there had been a “continual lack of provision of appropriate translation services . . .” by the District and noted that she had requested interpreting and translation services multiple times during the XXXXXXXXXXXX school year. Specifically, the Complainant alleged that there was a one-month delay in the District providing the translated version of the Student’s IEP to the Parent. In addition, the Complainant alleged that there were many errors in the translated documents and portions were missing. The Complainant also alleged that the District was “interfering with [the Student’s] ability to attend summer school.” The District’s position is that all special education-related documents were ultimately translated and that an interpreter was present at all IEP team meetings that took place since XXXXXXXXXXXX XXXX. The District concedes that the Student did not receive Extended Year Services for the week of XXXXXXXXXXXX XX XXXX.

Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant, the Parent, and the District, including but not limited to: emails between the Complainant and the District, emails between the Parent and the District, the Students’ IEPs and Behavior Intervention Plans, IEP team meeting notes and attendance sheets, two home language surveys signed by the Parent, an excerpt from the District’s Special Education Procedures Manual, the District’s requests and invoices for outside-translation/interpreter services, and the District’s narrative description of the policy and/or procedure for identifying, notifying, and tracking LEP parents/guardians of students with disabilities in need of interpreter and/or translation services and the process by which the District provides those services. In addition, OCR interviewed the current XXXXXXXXXXXX and the Parent.

Allegation 1—Title VI

The information that OCR has reviewed to date appears to show that the Parent requested language assistance from the District on XXXXXXXXXXXX XX XXXX, and language services were not provided by the District until the XXXXXXXXXXXX XX XXXX IEP team meeting for the Student. Between XXXXXXXXXXXX XX XXXX and XXXXXXXXXXXX XX XXXX, there were notices and other written communications only in English between the District and the Parent, and a team meeting was held on XXXXXXXXXXXX XX XXXX, with no interpreter present. Additionally, the information shows that there may have been a several month delay in translating some essential special education-related documents, including a letter to the Parent from the current XXXXXXXX (former XXXXXXXX) denying the Parent’s request for additional evaluations of the Student, a team meeting notice, a home visit summary by the District’s XXXXXXXX consultant, and a notice of proposed District action. It is unclear when each of these documents was provided to the Parent in XXXXXXXX. OCR thus has concerns that some essential

documents may not have been translated in a timely manner and that the District did not respond in a timely manner to the Parent’s language assistance request, particularly given that a team meeting took place without an interpreter after the Parent made her language needs known. These delays raise concerns that the District has not ensured meaningful communication with the Parent in a language that she can understand and has not adequately notified the Parent about special education-related information.

The Student’s IEP team met on XXXXXXXXXX XX XXXX, with an interpreter present, and developed an IEP for the Student. The IEP team reconvened at the Parent’s request on XXXXXXXXXX XX XXXX, with an interpreter present. According to handwritten notes provided by the District, the IEP team discussed XXXXXXXXXXXXXXXXXXXX and that XXXXXXXXXXXXXXXXXXXX The team decided that the District would use a different translation system and would have the IEP retranslated.

According to the District, the Parent’s XXXXXXXXXX was found eligible for special education services in XXXXXXXXXX XXXX. In the data response, the District provided XXXXXXXXXX translations of some of the documents relevant to the Parent’s XXXXXXXXXX special education services. However, based on the information that OCR has to date, it is unclear when the documents were translated and when they were provided to the Parent.

The District provided OCR with a narrative response explaining its procedures for identification of parents/guardians with limited English proficiency and for translation and interpreter services. The District explained that it provides the home language survey in another language when a parent/guardian asks or when the Principal or the Administrative Assistant suspect that a parent’s/guardian’s first language is not English. The District informed OCR that the Parent was provided a home language survey in English. Given that the District has a relatively small number of ELL students and/or students whose first language is not English, the District could, for example, use a cover page explaining—in the languages spoken in the District—how a parent may receive oral interpretation of the form and offer interpreters to ensure parents accurately report their language communication needs on the form. It is unclear whether the Parent’s home language survey response was later revised to reflect that the Parent required communication in XXXXXXXX or how District personnel were otherwise notified of this change.

The District also informed OCR that it contracts with XXXXXXXXXX for its translator and interpreter services, and described XXXXXXXXXX as a third-party agency with proper training and credentials. In the data request, OCR requested that the District provide a written description of any training provided to individuals who perform translation or interpreter services at special education-related meetings, including training on their role and responsibility at the meetings, special educational terminology, and translation procedures. The District’s response was that it relies on the third-party agency to provide all interpreter and translation services. The District pointed to a document from XXXXXXXXXX that describes its practices, which includes its screening process and certification requirements for its interpreters and translators.

Finally, OCR has three additional preliminary concerns regarding: (1) the District’s statement that the Parent and the District came to an agreement to email in English because of the time-sensitive nature of most enquiries, (2) that later both parties agreed to use Google Translate for

emails, and (3) that the District had a practice of honoring—on a case-by-case basis—a parent’s/guardian’s request to have a student, family member, or other individual act as an interpreter or be used for translation services. While the District notes that some of the emailed information is time sensitive, automated-translation services, such as Google Translate, should be reserved for emergency situations. Moreover, if there is an emergency situation for which an interpreter is unavailable, and a family member or friend acts as an interpreter, the District should follow up with the parent/guardian in a timely manner to communicate, through a qualified interpreter, the information that the family member or friend orally interpreted.

OCR notes that since the complaint was filed, the District has made efforts to improve services to LEP parents/guardians by creating a Language Access Plan that discusses parent/guardian identification, interpreter/translation services, providing information to parents/guardians, and the collection and analysis of LEP data.

Allegation 2—Section 504

The Complainant alleged that the District interfered with “[the Student’s] ability to attend summer school.” The Student’s XXXXXXXXXXX XXXX IEP, signed by the District, provided for Extended Year Services and also for door-to-door transportation with a monitor on a special transportation vehicle. The District acknowledges that due to having marked the Student’s IEP as pending because, although signed by the District, it was not yet signed by the Parent and the Student’s father, the Student was omitted from the Extended Year Services program list. This omission, in turn, caused a delay in the District providing transportation for the Student to and from the program. As a result, the Student missed four days (10 hours) of Extended Year Services during the week of XXXXXXXXXXX XX XXXX.

The current XXXXXXXX has since informed OCR that this system error has been corrected to prevent future recurrence. The current XXXXXXXXXXX explained that the software system has been upgraded to search for different versions of an IEP, including draft, pending, and signed.

Conclusion

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the District’s implementation of the Agreement.

This concludes OCR’s investigation of the complaint. This letter 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. OCR would like to make you aware

that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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.

Sincerely,

/s/

Michelle Kalka
Compliance Team Leader

cc: XXXX XXXXXX, Director of Special Education, Easthampton Public Schools (by email: XXXXXXXXXXXXXXXX)