



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

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REGION XV
MICHIGAN
OHIO

January 21, 2022

Via E-mail Only to: aewing@fbtlaw.com

Corrected Copy

Alexander L. Ewing, Esq.
Frost Brown Todd L.L.C.
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069

Re: OCR Docket No. 15-21-1023

Dear Mr. Ewing:

This letter is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Justice on June 20, 2020, and referred on October 15, 2020, to the U.S. Department of Education, Office for Civil Rights (OCR), against Dayton City School District alleging discrimination against based on national origin. Specifically, the Complainants alleged that the district:

1. Does not effectively communicate with limited-English proficient (LEP) parents¹ in a language that LEP parents can understand. For example, the District does not effectively communicate with LEP parents with respect to automated notifications, including school cancellations; student transportation issues; telephone calls; and parent-teacher conferences.
2. Does not provide LEP parents qualified interpreters at meetings with District staff and other educational providers, including but not limited to meetings concerning special education services. For example, interpreters do not explain special education terminology and other technical terms; utilize Americanized versions of words; and provide personal opinions when interpreting.
3. Does not provide documents that are a part of both general education and special education in a language that LEP parents and students can understand. For example, the District does not regularly and routinely translate enrollment information/forms; report cards; progress reports; and special education documents such as consent forms, Individualized Education Programs (IEP), evaluation team reports, and Section 504 plans.
4. Does not translate vital documents on its website into languages that LEP parents can understand. For example, the District does not translate enrollment instructions and

¹ Throughout this letter, the references to “LEP parents” includes LEP parents and guardians.

forms; the student code of conduct; board policies; District calendars; and transportation information on its website.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 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 by recipients of federal financial assistance. As a recipient of federal financial assistance from the Department the District is subject to this law.

Based on the complaint allegations, OCR opened an investigation of the following legal issue: whether the District denied national-origin minority LEP parents and students meaningful communication of school-related information in a language the parents and students could understand and thus subjected the parents and students to discrimination on the basis of national origin in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3.

During its investigation to date, OCR reviewed documentation provided by the Complainants and the District, interviewed the Complainants and multiple Complainant and District witnesses, and reviewed information available on the District's website.

The District provided OCR with information regarding the home and native languages spoken by District families. According to that information, the following six languages other than English represented the highest percentages of home/native speakers: Spanish, Swahili, Kinyarwanda, Arabic/Maslait, Turkish, Tigrinya. According to the 2019-2020 Ohio Department of Education Report Card for the District, its enrollment was 12,467, with 1,277 (10.2%) students identified as "English Learner."

Regarding allegation #1, the Complainants alleged that multiple LEP parents were not informed about parent-teacher conferences in a timely manner in a language they understood, which prohibited them from participating. Complainant witnesses said the District does not translate announcements such as snow days into Spanish and that bus notifications, early closings, and robo-calls are all provided in English. One example provided to OCR was that the District's extended fall break was announced on or around November 20, 2020, in English only.

Regarding allegation #2, the Complainants alleged generally that LEP parents have difficulty reaching someone in the District that speaks a language they understand. One Spanish-speaking LEP parent said she could not speak with anyone in Spanish when she went to her child's school. One witness said the quality of the interpreter services is inconsistent and depends on the staff member that answers the phone. For example, she said if an LEP parent contacts the transportation department the staff will hang up rather than speak with the LEP parent.

The Complainants also alleged that, when interpreters are provided (including through the District's contracted interpreter services), the quality of the services provided can be inadequate, particularly with respect to words and acronyms used during special education meetings. One witness said interpreters repeat technical terms without attempting to break the interpretation down in a way that LEP families can understand. She also said staff members are not trained on how to properly utilize interpreter services. For example, she said they will read an entire page of information from an IEP without slowing down for the interpreter to translate the information.

One LEP parent witness acknowledged that, initially, the District only communicated with her in English but, after she complained in or around 2019, she has not had a problem with language assistance. Another LEP parent said the District did have an interpreter on the phone with her in late 2020 so she could talk to her child’s teacher—she said that was the first time the District had provided an interpreter for her.

Regarding allegation #3, the Complainants alleged that the District has not translated important documents and communications to LEP parents, including notices of meetings, announcements, school cancellations, notices of events, health plans, documents related to extracurricular activities, progress reports, report cards, and other routine communications. Most recently, the Complainants alleged that, in April 2021, after having no issues requesting interpretation services for initial conversations with the District, LEP parents of newly enrolled students were initially sent follow-up documents such as the enrollment packet only in English.

The Complainants also alleged that more than one LEP parent received special education evaluation and IEP consent forms, evaluations, IEP Progress Reports, and other IEP documents in English only. One LEP parent witness said the Section 504 plan for her child was only partially translated into Spanish; portions remained in English. The Complainants alleged that the District trained its staff in September 2020 that written translations of special education documents are needed only if they were not orally interpreted at a meeting; a copy of presentation materials entitled “OEC BUILDING CASE MANAGER MEETING” and dated September 16, 2020, was provided to OCR in support.

Multiple Complainant witnesses did state that some documents sent to LEP parents are appropriately translated and described examples of such during the 2020-2021 school year.

Regarding allegation #4, the Complainants alleged that the District’s website utilizes Google Translate to translate vital information for parents but, among other alleged issues, does not include languages spoken by some LEP parents in the District, such as Tigrinya. They alleged that most PDFs on the District’s website are provided only in English and that PDFs are not translated by Google Translate. In support of their allegation, they provided screen shots from the District’s website, including but not limited to the student handbook, school calendar, certain enrollment information, information concerning the gifted identification process, and COVID-19 updates and plans.

In response to OCR’s data request, the District provided evidence that it provides interpreter and translation services to LEP parents, including but not limited to copies of translated documents concerning the District’s English language learner program, immunization, student testing, and special education. The District provided OCR with a copy of its English Learner Program Handbook (Handbook) that includes a section entitled “Parental Communication.” The Handbook states, in part:

Parents, families, and/or guardians of ELs should receive readily understood notices of school programs and activities impacting their child’s education. All

DPS staff may use the Interpreting Services (see Appendix for instructions) for quick calls home in any language, anytime.

In daily practice, send written messages home in English and in the home language, when possible. Keep files of these notices with blanks for times and dates. Follow up with a phone call using the interpreter line – any language, anytime!

Translation Services (written)

A generic file of common forms in several languages may be found:

- on the DPS Infonet Document Library under Office of Exceptional Children, ESL Translations
- on Google Drive and shared with each school through the EL Specialist or Point of Contact

If documents that impact more than one school need to be translated, please send the document electronically to the EL Coordinator for evaluation.

The DPS website supports Google translate in several languages, which allows parents and staff to toggle between languages to view the site. Look for the Google icon at the bottom of the homepage.

Interpreter Services (spoken)

The more informed parents are, the more likely it is that they will be able to support their child's learning. The district is obligated to communicate with families in a language they understand.

DPS employs bilingual staff as well as contracts with outside agencies when necessary to ensure communication in the home language.

Please become familiar with using an interpreter and the telephonic language line. The following suggestions may help. [Suggestions follow in Handbook.]

On page 7 of the District's 2020-2021 Student Code of Conduct it states: "Dayton Public Schools has free language assistance available for Limited English Proficiency (LEP) parents with respect to school programs and activities. To be eligible for assistance, a parent does not have to be of limited English proficiency in speaking, reading, writing and comprehending English in order to be considered LEP, but, rather, that it is only necessary that a parent be limited in at least one (1) of these areas in order to be eligible to receive language assistance as needed. Dayton Public Schools will accept a parent's assertion that he or she needs language assistance without requiring additional corroboration." The notice is provided in English, Spanish, Arabic, Swahili, French, and Kinyarwanda/Kirundi.

In its narrative response, the District said it has systems in place that allow nearly every written communication with LEP parents to be translated into their preferred language. It said, where teachers, schools, or other staff members provide written communications to English speaking families through methods that do not support universal translations, the staff members determine how the information should be communicated to LEP families. If, in the staff member's professional judgment, the written communication should be translated (rather than orally interpreted or otherwise communicated) given the nature of the message, the staff member can contact the ELL Outreach Coordinators for the District and/or the Office of Curriculum, Instruction, and Staff Development, who work with one of the District's contracted services to obtain a translation. The District said its Office for Exceptional Children (OEC), because of independent legal requirements stemming from the Individuals with Disabilities Education Act, has a different practice for obtaining translations of special education documents and interpreters.

District staff interviewed by OCR regarding how and when staff and administrators are trained on the District's LEP parental communication policy indicated staff are provided this information during staff meetings at the beginning of each school year and through an e-mail that is sent to the entire staff. The information that is provided to the staff includes instructions on how to access interpreters on the phone or get a document translated. Staff interviews clarified that the District relies upon the discretion of individual staff members to determine whether written communication to a LEP parent should be translated.

The District contracts with two language service providers to provide oral interpreters and document translations. The District said it relies on its contracted partners to hire, train, assess, and supervise the individuals who provide interpreter and translation services to the District. The District does not have its own procedure for assessing and evaluating the competency levels of individuals that provide interpreter and/or translation services and does not currently provide a method for staff, parents, and/or students to give feedback on interpreter and/or translator services.

The District told OCR that its website can be translated into over 103 different languages and that it uses the ParentSquare application that automatically translates documents and messages. OCR reviewed the District's website and a drop-down menu for language selection appears at the top of the District's website. OCR noted, however, that multiple documents on the District's website (particularly PDFs) do not translate to other languages using this method.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On January 20, 2022, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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 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 Complainant 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 April 8, 2022. For questions about implementation of the Agreement, please contact Ms. Erin Barker-Brown. She will be overseeing the monitoring and can be reached by telephone at (216) 522-4978 or by e-mail at Erin.Barker-Brown@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640.

Sincerely,

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure