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December 16, 2014

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Sent Via Electronic Mail

Re: New York City Department of Education's Continued Systematic Denial of Language Services to Limited English Proficient Parents of Children with Special Needs, OCR Case No. 02-12-1269

Dear OCR Investigators:

We are writing to follow up on our June 20, 2012 complaint, OCR Case No. 02-12-1269, which seeks a determination that the New York City Department of Education (DOE) has violated Title VI of the Civil Rights Act of 1964 and its accompanying regulations and policies on account of its failure to provide translation and interpretation services to limited English proficient (LEP) parents of children with disabilities. Since sending our supplemental letter on December 20, 2013, New York Lawyers for the Public Interest (NYLPI) and Advocates for Children of New York (AFC) have continued to work with numerous LEP parents of children with disabilities who have not received interpreters at important meetings or translated special education documents from the DOE. The DOE continues to routinely deny LEP parents of students with disabilities the right to participate in their children's special education program in direct violation of local, state and federal law.

Over the past year, AFC and NYLPI have assisted dozens of LEP parents who have encountered similar barriers in getting special education documents translated and obtaining qualified interpreters for important conversations about their children's education. We have provided examples of such language barriers in the sections below. These troubling incidents reveal the

continued need for systemic reform in the DOE system to ensure that LEP parents can understand and advocate for their children's unique educational needs.

In addition, we write to share our concerns about the DOE's recent limited and unsuccessful efforts to improve language access for LEP parents. We provide several recommendations for changes that the DOE must implement in order to ensure that LEP parents have access to high-quality translation and interpretation services.

DOE's Continued Failure to Translate Special Education Documents

Since our supplemental letter in December 2013, NYLPI and AFC have continued to document countless language access failures on the part of the DOE. The DOE routinely fails to translate education-related documents for parents who cannot otherwise understand such materials due to limited English proficiency. These documents contain critical child-specific information, such as educational evaluation results and education plans, as well as general information about meetings and parent workshops.

Since January 2014, NYLPI and AFC have identified hundreds of situations in which LEP parents did not receive translation of one (and frequently many) of the following documents: an Individualized Education Program (IEP), an evaluation report, a meeting or workshop notice, a report card, a progress report or a hearing decision. Below are some recent examples highlighting the DOE's failure to ensure meaningful parent participation:

- Derek Granda-Chavez is a three-year old child with a speech delay in pre-school. Derek's parents' primary language is Spanish and they are unable to read or understand the special education documents and notices sent to them in English by the Committee on Pre-School Special Education (CPSE). Derek's parents never received a translated IEP from the CPSE, even after requesting one. Ms. Chavez has also failed to receive qualified interpreters during multiple interactions with DOE staff. Ms. Chavez has even been exposed to rude and discriminatory remarks about her inability to speak English when she attempted to communicate with DOE staff about her son's needs. She was told by a DOE staff member: "This is the U.S. You need to speak English." Today, December 16, 2014, Ms. Chavez filed an individual complaint with OCR regarding this discrimination. Please see her complaint for more details about the DOE's intentional discrimination and failure to provide her with language services, which has resulted in her inability to participate meaningfully in her child's education.
- JA and SN are siblings receiving special education services from the DOE. JA is a twelve-year-old student with an intellectual disability and SN is a fifteen-year-old student who is deaf. Their parent's primary language is Spanish and she is unable to read or understand the special education documents and notices provided to her in English. Over the years, she has never received a translated copy of either child's IEP from the DOE. In fact, when asked to provide a translated copy of JA's most recent IEP from November 2013, the IEP team not only denied the request but was also unwilling to verbally translate its contents. This has led to several miscommunications between the parent and the DOE. For example, while the parent was able to secure a paraprofessional to accompany JA on the bus for the

2014-15 school year, she was unaware that the school psychologist included “behavioral problems” on JA’s IEP to justify the need for one. She only found out after having a friend translate the IEP orally. When she asked for an explanation, the school psychologist only advised her to seek legal representation. The DOE’s failure to provide language services has impeded JA and SN’s mother’s ability to meaningfully participate in her children’s education.

- AJ is an eleven-year-old student with autism in a twelve-month program. AJ’s parent’s primary language is Spanish and she is unable to read or understand the special education documents and notices provided to her in English. AJ’s most recent IEP meeting was in November 2013. AJ’s mother had requested an interpreter for the meeting so she could explain the need to place AJ on specialized busing with A/C during the summer for health reasons. However, the only interpreter available was a classroom aide who knew limited Spanish. The aide merely summarized the conversation, leaving out key information, but assured the parent that the specialized busing services would be provided. Because the DOE not only failed to provide a qualified interpreter, but also failed to translate the revised IEP, the parent would only later find out through her Medicaid Service Coordinator that the services were never included in AJ’s revised IEP. AJ’s mother was told she would need a doctor’s letter to support her request for specialized busing, but it was too late to obtain such a document in time for the accommodation to be provided that summer. As a result, AJ was forced to spend the 2014 summer traveling on a bus with no A/C, which caused him to experience headaches and feel nauseous from the heat. To date, AJ’s mother also has yet to receive a translated copy of AJ’s IEP, despite her requests. The DOE’s failure to provide language services has impeded AJ’s mother’s ability to meaningfully participate in her child’s education.
- FM is 7-year-old kindergarten student classified as having multiple disabilities and diagnosed with ADHD. FM’s parent’s primary language is Spanish. She is unable to read and understand the special education documents and notes provided to her in English. The DOE convened an IEP meeting in May 2014 which the parent attended. The parent requested a copy of the IEP in Spanish during the IEP meeting, but the school psychologist told her to take it up with the principal. The parent then wrote a letter to the principal in May 2014, again requesting a copy of the IEP in Spanish. The principal told her she would be sent one, but as of November, she had still not received it. In November, the student transferred to a different school. After the transfer, the parent again requested a copy of the IEP in Spanish. To date, the parent has yet to receive a copy of the May 2014 IEP in Spanish. The DOE’s failure to provide language services has impeded the parent’s ability to meaningfully participate in her child’s education.
- GV is a twelve-year-old student with a speech and language impairment in the sixth grade. GV’s parent is a Spanish speaker and is unable to read or understand special education documents or notices provided to her in English. Though the parent sometimes receives handwritten notes from the teacher in Spanish, she has never received a translated IEP from the IEP team. As a result, she has to depend on her other child to translate these documents. On other occasions, when her daughter is not home, the parent must try to find someone else to translate, which often takes considerable time. GV’s most recent IEP was in

October 2014. Even though a guidance counselor assured the parent that a Spanish translation of the IEP would be provided, it was not. Instead, she once again had to rely on an oral interpretation of the contents. These language barriers extend to other forms of communication as well. Prior to GV's last IEP meeting in October 2014, GV's parent received voice messages by the school in Arabic even though her primary language was Spanish. She had to visit the school several times before they finally changed the recordings to her native language. While she was able to resolve this issue, the school and IEP team's persistent failure to translate GV's document continues to impede her ability to fully and meaningfully participate in her child's education.

- OCR complainant, Mirella Nuñez, through her advocate, recently requested that her son's most recent IEP and evaluations be translated. The school psychologist followed up on the request by informing Ms. Nuñez that it would not be possible to translate the IEP or evaluations. In the absence of translated documents, it continues to be difficult for Ms. Nuñez to meaningfully participate in school meetings, understand documents and notices she receives, and advocate for her son's educational needs to be met.

DOE's Continued Failure to Provide Qualified Interpreters

The DOE has similarly failed to provide qualified interpreters to LEP parents at various meetings and due process hearings related to their children's special education services. AFC and NYLPI have compiled below a sampling of such barriers that have come to our attention since our last letter of December 20, 2013:

IEP/School Meetings

- KC is a seven-year-old student with autism. KC's mother is Spanish-speaking and she is unable to read or understand the special education documents and notices provided to her in English. At a recent IEP meeting for KC, the school psychologist leading the meeting also served as the interpreter for KC's mother. Substantive material discussed during the meeting was either partially translated, or not translated at all. Moreover, when KC's mother attempted to participate in the meeting by asking KC's classroom teachers about her progress, the school psychologist refused to interpret on the parent's behalf. Instead, she directly responded to the parent's questions and would not facilitate communication between the parent and the teachers. Even when the parent insisted that the school psychologist interpret her questions, the psychologist refused. KC's mother has yet to receive quality and neutral interpretation at an IEP meeting. She has never received a translated copy of KC's IEP. The DOE's failure to provide language services has impeded KC's mother's ability to meaningfully participate in her child's education.
- KS is a twelve-year-old 7th grader diagnosed with a speech impairment. His parent's primary language is Spanish and she is unable to read or understand the special education documents and notices provided to her in English. For years, the parent never received translated documents from the DOE. In fact, an administrator told her that the DOE was not legally obligated to do so. In addition, the DOE has never provided the parent with an

interpreter at IEP meetings despite its knowledge of her limited English proficiency. Because she received neither a translated IEP nor an interpreter, the parent would attend IEP meetings but was unable to participate. On one occasion, the parent unknowingly consented to eliminate KS's individual speech and language therapy despite evidence of KS's regression. As a result, the speech and language specialist had to recommend 450 hours of intensive tutoring in a January 2014 evaluation to help KS catch up. The parent finally secured a translated copy of KS's most recent IEP in April 2014, but only as a result of advocacy by her attorneys at a resolution session. The DOE's failure to provide language services has impeded KS mother's ability to meaningfully participate in her child's education.

- KM is a five-year-old student classified with a speech and language impairment attending a 12:1:1 class in a District 75 school. KM's parents are Spanish-speaking and cannot read or understand the special education documents and notices provided to them in English. Prior to changing schools as a result of the "Turning Five" process, the parents' requests for a translated IEP and an interpreter at IEP meetings were denied by both the Committee on Pre-School Special Education (CPSE) and the school principal. While the parents finally got the new school to agree to translate KM's most recent IEP, securing an interpreter has continued to be a problem. On one occasion, the father had requested an interpreter two days in advance of the meeting and was told by the new IEP team that one would be provided. But when the parents arrived at the meeting, no interpreter was present. The parents realized no one was ever notified and the start of the IEP meeting was delayed while the IEP team figured out how to conference in an interpreter for the meeting. The DOE's failure to provide language services has impeded KM's parents' ability to meaningfully participate in their child's education.
- PC is a six-year-old student in the first grade with autism and attends a 6:1:1 class in a District 75 school. His parents are Spanish-speakers and have never received documents or notices relating to their child's special education services by the school in their primary language. In January 2014, for example, the DOE sent a notice in English regarding an upcoming IEP meeting. Because the parents could not read the document, they were unaware of the meeting and did not attend. As a result, changes were made to PC's IEP, which the parents only found out about after a friend verbally summarized PC's revised IEP. Even when the parents have attended IEP meetings, however, the school did not make any effort to provide them with an interpreter. For example, because they did not agree with the changes to the new IEP, they had to request another IEP meeting and bring their own interpreter to facilitate the conversation. On other occasions, the principal's assistant, an IEP team member, told the parents that it was their responsibility – not the school's – to secure an interpreter. In the few cases where a bilingual person was present, it was usually a member of the IEP team such as PC's teacher instead of an independent, neutral interpreter. The parents have yet to receive either a translated IEP or a qualified interpreter at an IEP meeting. The DOE's failure to provide language services has impeded the PC's parents' ability to meaningfully participate in their child's education.
- JF is a nine-year-old fourth grader with autism. The parents' primary language is Spanish. Neither parent understands English well enough to read their child's IEP, but the school

has never provided the parents with any translated documents. As a result, the mother has often had to return to the school to ask for clarification because she does not understand the technical language of the IEP. In addition, the parents are frequently not provided with an interpreter at JF's IEP meetings. When provided, the "interpreters" have almost always been volunteers, some of them other students. These volunteers have often lacked the proper training to communicate effectively, resulting in summaries of the information and side comments rather than appropriate and full interpretation. The lack of qualified interpreters coupled with the technical language of special education documents have effectively cut the mother and father off from participating in their child's education. The DOE's failure to provide language services has impeded the parents' ability to meaningfully participate in their child's education.

- TZ is a ten-year-old student with autism. His parent's primary language is Bengali, and she is unable to read and understand the special education documents and notes provided to her in English. Since her son started receiving special education services in kindergarten, she has never received any of her son's special education documents in Bengali. At every IEP meeting that she has attended she has requested a translation of the IEP, making clear that in order to properly advocate for her son and to properly understand the services that are being given to him, she would need the IEP in Bengali. However, to date the parent has never received a Bengali language IEP. At an IEP meeting during the 2013-2014 school year, a Bengali interpreter was provided. The parent made certain requests in Bengali that she wished to be interpreted. Yet, the interpreter refused to communicate her wishes to the IEP team, telling her that it was pointless to make such requests because the DOE would not comply with them. At an IEP meeting during the 2014-2015 school year, the school psychologist told the parent that an interpreter would not be necessary if TZ's sister was present and had interpreted for her before. Eventually, a Bengali interpreter was provided, but only after TZ's attorney insisted that one be present. The DOE's failure to provide language services has impeded TZ's mother's ability to meaningfully participate in her child's education.

Due Process Hearings

- JL is a fourteen-year-old student who is diagnosed with autism and attends a specialized non-public school. His parents' primary language is Vietnamese. They are unable to read or understand the special education documents and notices provided to them in English. None of JL's IEPs have ever been translated into Vietnamese or interpreted for the parents until an advocate and attorney became involved in the spring of 2014. However, JL's parents continued to encounter language barriers throughout the special education process. On February 11, 2014, JL's mother attended an impartial hearing with her attorney and advocate. While a Vietnamese interpreter was provided by the Impartial Hearing Office, the interpreter was not qualified to perform her duties. At the outset of the hearing, she altogether failed to interpret anything the hearing officer was stating for the record, even after repeated requests by the attorney and the hearing officer. The parent's advocate and attorney were forced to stop the hearing to address the lack of interpretation and eventually asked the hearing officer for permission to use their own interpreter. Without such intervention, the parent would have received virtually no interpretation and an inaccurate

record would have been created in the case. The DOE's failure to provide quality language services has impeded JL's parents' ability to meaningfully participate in their child's education.

- HG is a twelve-year old student with a learning disability. His parent's primary language is Spanish. She is unable to read and understand special education documents and notices provided to her in English. During a July impartial hearing, a Spanish interpreter for the student's parent was present, but the interpreter failed to deliver accurate and competent interpretation. The parent's Spanish-speaking attorney and advocate had to request that the proceeding be stopped on numerous occasions to address serious errors in both Spanish and English interpretation during the parent's testimony. For example, when the attorney asked the parent which schools her son had attended, the interpreter incorrectly translated the question by asking what school her son currently attended. At another point in the parent's testimony, the hearing officer, who did not even speak Spanish well, corrected the interpreter's numerical interpretation.

Moreover, the interpreter's inaccurate interpretation created a confusing and inaccurate record. On one occasion, the interpreter mistranslated the parent's testimony regarding a neuropsychological evaluation by stating the child had neurological problems. Again, the hearing officer was required to go off the record to resolve the issues with the translation. The record also reveals that the interpreter asked the parent to shorten her responses, thereby limiting the parent's testimony solely because of the interpreter's inability to properly interpret. After the hearing, the interpreter approached the parent and confirmed that she was not interpreting statements word for word, but rather simplifying/paraphrasing the statements. The interpreter expressed annoyance to the client over the demands for accurate interpretation that were made during the impartial hearing. The DOE's failure to provide quality language services has impeded HG's mother's ability to meaningfully participate in her child's education.

- SH is a ten-year-old student with autism. SH's parent's primary language is Arabic. She speaks some English, but she is unable to read and understand special education documents in English. At an impartial hearing in September, an Arabic interpreter was provided to the parent to interpret complicated questions or statements made during the hearing. On two separate occasions, when the parent requested the assistance of the interpreter, the interpreter was not paying attention and had not heard the question or statement. When the interpreter did interpret for the parent, the parent did not understand anything that she said. According to the parent, the interpreter was not familiar with and did not know how to interpret the special education terms used at hearing. In addition, the interpreter spoke out of turn at a few points during the testimony. The DOE's failure to provide language services has impeded SH's mother's ability to meaningfully participate in her child's education.

Recommended Improvements to the Language Access Coordinator (LAC) Program

We have several concerns about what we understand to be the DOE's vision for the LAC program, including the following:

- The LAC's responsibilities are limited to serving as a resource for school-based colleagues and informing school staff about their translation and interpretation obligations.
- The LAC is not involved in ensuring translation and interpretation services are provided to parents. Nor is the LAC the designated point of contact at the school for parents in need of language access services.

To address our concerns, we recommend that the DOE be required to make the following changes to the LAC program:

- The LAC should coordinate the provision of translation and interpretation services and serve as the point of contact for parent questions and concerns. As the person in the school charged with mastering the school's translation and interpretation obligations, LACs are in the best position to perform the above functions.
- The LAC should be required to collaborate with parent coordinators and inform LEP parents of their right to language access services. The outreach should be done in languages spoken by LEP parents and must extend beyond the signs that are currently posted in school buildings.

We also have the following concerns about the DOE's implementation of the LAC program:

- By the start of the school year, training of school-based LACs had not yet been completed. Schools have been given until January 2015, halfway into the school year, to arrange for their LACs to be trained.
- LACs have only been appointed at the school level. The program has not been extended to district offices, networks, CPSEs, Committees on Special Education (CSEs) or borough-wide offices.

In order to address the above identified issues, we recommend that the DOE be required to:

- Conduct LAC trainings prior to the start of each school year.
- Require each district, network, CPSE, CSE, and borough enrollment office to designate a LAC.
- Develop a system to identify schools where there has been turnover and a LAC position is vacant. Schools without LACs must be given a deadline by which a new LAC will be appointed and trained.

Recommendations for Vendor-Provided Translation and Interpretation Services

We have provided OCR with several examples of DOE vendors providing poor quality interpretation and translation. We encourage OCR to require the DOE to include additional training and quality control measures as part of their translation and interpretation contracts with outside vendors. We recommend the following:

- Vendors who will be providing translation and interpretation services for parents of children who receive special education services should be required to receive training on special education terminology.
- Vendors must also be required to assess their interpreters to ensure that the interpreters are fluent in both English and another language.
- The DOE should create a formal complaint mechanism to ensure that parents can report negative experiences with vendor-provided interpretation and translation. These complaints should be reviewed by the DOE's Translation and Interpretation unit and shared with the contracted vendors in order to ensure improvements are made.

In addition, we strongly recommend that the DOE fully utilize translation software, such as SDL Trados, to maximize the efficiency of translation while minimizing translation costs. This should include school, CPSE and CSE access to such services for purposes of translating individual student-specific documents, such as IEPs, report cards and evaluation reports.

Recommendations for DOE Staff Interpreters

The DOE is using the NYCertified program to assess and train bilingual school staff to serve as interpreters and translators. As a condition for translating special education documents or interpreting at IEP meetings, NYCertified translators and interpreters should be required to undergo additional training addressing the special education process and related terminology. Given the number of LEP parents of students with disabilities who interface with CPSEs and CSEs and the inconsistent and poor quality interpretation that CPSEs and CSEs offer to LEP parents, it is critical that CPSEs and CSEs also be provided access to the NYCertified program.

DOE Must Ensure Meaningful Access for LEP Parents

As evidenced by the numerous recent examples of language access barriers cited above, the DOE has still failed to develop an adequate system by which to ensure that LEP parents can meaningfully participate in their children's special education. LEP parents remain isolated from the special education process, unable to exercise their children's rights to a free appropriate public education.

We urge your office to make a prompt determination that the actions of the DOE constitute a systemic violation of Title VI of the Civil Rights Act of 1964 and its accompanying regulations and policies. Further, and as detailed in our original complaint, we seek an order directing the

DOE to remedy such violations by creating and funding a clear and comprehensive system that will ensure the timely provision of qualified interpreters and quality translation of educational documents. This system must include training for school, network and central DOE staff, as well as multiple means by which to inform LEP parents of their right to language services. Finally, the DOE must institute a robust system of accountability, including an accessible complaint mechanism for LEP parents, affirmative investigation and oversight regarding school compliance, and collection of data on whether the DOE is meeting the language access needs of LEP parents of special education students.

We would like to discuss our ongoing concerns regarding the DOE's continued violation of federal law, as well as the status of OCR's investigation of our complaint. Please contact Kelly McAnnany at (212) 336-9311 or kmcannany@nylpi.org or Abja Midha at (212) 822-9502 or amidha@advocatesforchildren.org to schedule a call.

Sincerely yours,



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